



Canada Royal Commission
on pilotage
Hearings 1964
147-150



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ROYAL COMMISSION

ON

PILOTAGE

HEARINGS

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ROYAL COMMISSION ON MARINE PILOTAGE

Proceedings of the hearing held
in the Exchequer Court Building,
Ottawa, Ontario, Friday, the
25th day of September, 1964.

COMMISSION:

| | |
|------------------------------------|-----------|
| The Honourable Mr. Justice Bernier | Chairman |
| Mr. Robert K. Smith | Member |
| Mr. Harold A. Renwick | Member |
| Mr. Gilbert Nadeau | Secretary |

COMMISSION COUNSEL:

Mr. Maurice Jacques

PRESENT:

| | |
|----------------------|---|
| Mr. J. Brisset, Q.C. | for the Shipping Federation of Canada |
| Mr. Marc Lalonde | for the Federation of St. Lawrence River Pilots; Corporation of the Lower St. Lawrence Pilots; Cor- poration of Montreal Harbour Pilots; Corporation of the Mid-St. Lawrence Pilots; Corporation of the St. Lawrence River and Seaway Pilots; Corporation of the Upper St. Lawrence Pilots. |
| Mr. R. Langlois | for the Canadian Merchant Service Guild |
| Mr. R. Macgillivray | for the Department of Transport |



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1 ---On commencing at 10:00 a.m.

2 THE CHAIRMAN: I now wish to tell you about
3 the change in the dates for pleadings. Instead of
4 the weeks of the 23rd and 30th of November it would
5 be, as we discussed with you, starting Wednesday,
6 January 6, 1965.

7 MR. JACQUES: That is a holiday, my lord.

8 THE CHAIRMAN: Not here. On the other side
9 of the river.

10 MR. LALONDE: Not even. Commission counsel
11 late
12 is a little bit/in his religious activities or
13 information I should say.

14 MR. JACQUES: The old school.

15 THE CHAIRMAN: Therefore we do not know how
16 long the pleadings are going to be, and if necessary it
17 will go in the week after, the following week, and we
18 will carry on until it is finished. We will try to
19 have a program made so that people will not be
20 obliged to be here unnecessarily. I think we might
21 start by you people from the St. Lawrence on Wednesday,
22 the 6th.

23 CAPTAIN SLOCOMBE, sworn

24 DIRECT EXAMINATION BY MR. JACQUES:

25 Q. Captain, with respect to the problem
26 of accident prone pilots I believe that you have with
27 you a file on one particular pilot for the district
28 of Quebec, who shall be nameless. The file number
29 is 679, so we can call him pilot 679.

30 I believe this pilot after serving part of



1 his apprenticeship was issued a temporary licence.

2 Would you, for the sake of completeness of
3 the answer, tell us first when he was accepted as
4 apprentice and when his temporary licence was issued?

5 A. You want the date of the apprenticeship
6 first?

7 Q. Yes, please?

8 A. This pilot was issued a licence as
9 apprentice pilot -- it was sent on July 29, 1952.

10 Q. So in July 1952 he became an
11 apprentice?

12 A. An apprentice pilot, right.

13 Q. In those days would you recall what
14 the normal length of apprenticeship was or the length
15 as specified in the by-laws?

16 A. In the Quebec district?

17 Q. Yes?

18 A. Five years I think. Maybe Captain
19 Dussault could just remind us.

20 CAPTAIN DUSSAULT: It used to be six. It
21 was reduced to five and it is now three.

22 THE WITNESS: Can you tell us if at this
23 time it is five in 1957?

24 CAPTAIN DUSSAULT: You would have to tell me
25 the date.

26 THE WITNESS: 1952 to 1956.

27 CAPTAIN DUSSAULT: Five years.

28 MR. JACQUES, Q: So he became an
29 apprentice in July, 1952, and when was he issued a
30 temporary licence?



1 A. Issued a temporary licence on the 22nd
2 of August, 1956.

3 Q. Four years?

4 A. Correct.

5 Q. In order to be issued with a temporary
6 licence he had to pass exams, did he not?

7 A. This is correct.

8 Q. Would you tell us when he passed his
9 exam and whether he appeared more than once before the
10 Board of Examiners?

11 A. On April 19 the report of the chairman
12 of the examining board stated that pilot 679 had been
13 examined and failed in his examination.

14 THE SECRETARY: What date?

15 THE WITNESS: April 19, 1956. It was
16 recommended that he be examined in all subjects after
17 a period of four months, in which time he was required
18 to make a certain number of trips.

19 MR. JACQUES: Q. Would your file show in
20 what respects he failed?

21 A. No, sir.

22 Q. At any rate he failed on the first exam,
23 and was then requested to perform trips and appear again
24 in four months; is that correct?

25 A. That is correct.

26 Q. Did he appear again after the four
27 month period?

28 A. He did, and a temporary licence was
29 issued to him, valid from the 16th of August, 1956.

30 Q. Would you have the report of the



1 examining board on this second exam?

2 A. Yes. It merely says that he had passed
3 a satisfactory examination in every respect.

4 Q. So he was issued his temporary licence?

5 A. Right.

6 Q. Subsequent to that I believe his
7 licence was withdrawn?

8 A. Yes. There is a copy of a letter to
9 the superintendent of pilots dated January 2nd, 1957.
10 It says that the Pilotage Authority, having considered
11 the report of the preliminary inquiry into the collision
12 between the SS ASIA and the MV WOLFGANG RUSS, ordered
13 the withdrawal of the licence of this pilot.

14 Q. This collision had occurred when?

15 A. I am told it is somewhere around the
16 previous November.

17 Q. Say four months after he had been
18 issued with his licence? I believe you said his
19 temporary licence had been issued in August?

20 A. Yes.

21 Q. So it was roughly four months afterwards?

22 A. Yes.

23 Q. I don't think we need know the exact
24 date. Did the Authority study the evidence presented
25 to the Commission of Inquiry at that time?

26 A. Oh, yes.

27 Q. What did it show with respect to the
28 general ability of the pilot in question? I am not
29 asking if it showed strictly a finding of negligence, but
30 what did it show with respect to the general ability



1 of the pilot?

2 MR. LALONDE: My lord, before the witness
3 answers this question, and I certainly have no brief for
4 the particular pilot concerned, but I am just raising
5 this point as a point of general procedure. I know that
6 this particular pilot is now involved in a formal
7 investigation, and I think certainly part or maybe most
8 of what Captain Slocombe has said is public information.

9 However, on the other hand I wonder whether
10 there are not certain questions which would be more or
11 less of a confidential nature and whether it might not
12 be prejudicial to the individual concerned.

13 I am just raising this point. I am not
14 pressing the point at all. I am just raising the point,
15 knowing that this gentleman is under formal
16 investigation, and I think it would be unfair for him
17 to have against him in a public record the information
18 which normally other parties would not have been entitled
19 to obtain.

20 MR. JACQUES: My lord, I have spoken about
21 that with the representative for the Guild, but I do not
22 think the Guild represents pilot 679. However, if your
23 lordship thinks that it may cause prejudice to the man,
24 I have no objection to dropping this subject. It could
25 be taken up later on.

26 THE CHAIRMAN: A formal investigation is being
27 carried out now or will be carried out in the very near
28 future?

29 MR. LALONDE: Yes, my lord. I am quite sure
30 much of the information could be obtained from Captain



1 Slocombe which is of a public nature; that is, kind and
2 number of accidents and that type of thing.

3 THE CHAIRMAN: That is all right.

4 MR. LALONDE: I am a little bit worried about
5 information concerning results of individual exams and
6 this type of questioning. I don't know whether this is
7 public information.

8 THE CHAIRMAN: Have you any views on that,
9 Mr. Brisset?

10 MR. BRISSET: I am in a very embarrassing
11 position.

12 THE CHAIRMAN: I see. Well, thank you.

13 MR. LALONDE: Two counsel before this
14 Commission are in a very embarrassing position.

15 MR. BRISSET: I don't think I could make
16 any public declaration.

17 THE CHAIRMAN: You were amicus curiae. I think
18 the point is well founded. We are going to postpone this
19 examination, this line of question until our next hearing,
20 not
21 /next week but on the 19th of October, and we will see
22 what has happened until then. Everything that is in
23 the record can be read now, though, which is merely
24 facts. I have no objection to that being tabled right
25 now.

26 MR. JACQUES: Well, I agree with my friend
27 Mr. Lalonde that this might perhaps prejudice the
28 position of the pilot, and I would rather drop it
29 completely now and take it up later on.

30 THE CHAIRMAN: That is all right. That is
what we will do.



1 MR. JACQUES, Q: I believe you have another
2 file, and I think this time there should be no objection
3 to discussing this particular case. This time it is
4 pilot 688. Pilot 688 was licenced for which district?

5 A. Montreal district.

6 Q. Was he a river pilot or a harbour
7 pilot?

8 A. River pilot.

9 Q. I believe that this is one case where
10 a temporary licence was issued; is that correct?

11 A. Every pilot is issued a temporary
12 licence for the first year.

13 Q. Would you tell us when he was licenced
14 as an apprentice and when he recieved his temporary
15 licence?

16 A. I have a letter stating that this
17 pilot was indentured apprentice pilot on the 20th of
18 August, 1952.

19 Q. Yes. In 1952 what was the specified
20 length of apprenticeship for the district of Montreal?
21 I am instructed it is five years.

22 A. Five years.

23 Q. When did he receive his temporary
24 licence as a pilot? He was indentured in October, 1952.

25 A. I may say that he did not take up his
26 apprentice pilot's licence immediately because he was
27 away at sea.

28 Q. When did he in fact start his
29 apprenticeship?

30 A. The report is he came on June 15th, 1953



1 to the supervisor's office to receive his licence.

2 Q. So we can say that roughly speaking
3 his apprenticeship started in June?

4 A. It wasn't given him then because there
5 was a bad report about something he had been involved
6 in, and he was away at sea.

7 Q. I am sorry. Was it with respect to
8 navigation of ships?

9 A. No. It was something that he was
10 involved in with customs violations.

11 Q. That is of no interest to us. He still
12 could be an excellent pilot.

13 THE CHAIRMAN: They are customs violations
14 because they are caught generally!

15 THE WITNESS: I should add, my lord, after
16 inquiry on the point it was found that this pilot had
17 been acquitted in the court case in which he had been
18 involved.

19 MR. JACQUES, Q: I see.

20 A. And then the supervisor is instructed
21 to give him his licence which must have been -- this
22 letter from me to the supervisor was dated June 24, 1953,
23 so I assume that on receipt of this, possibly the next
24 day, the licence was given to the pilot.

25 Q. So to all intents and purposes could we
26 say that his apprenticeship started in fact in June, 1953
27 or July, 1953?

28 A. June or July. Probably June.

29 Q. When was he first issued with a pilot's
30 licence, temporary pilot's licence?



1 A. Temporary licence was issued effective
2 the 17th day of May, 1957.

3 Q. So a little less than four years after
4 his apprenticeship had begun in fact. Now did he
5 appear more than once before the examination board for
6 the obtaining of his temporary licence?

7 A. No, I have no record that he was.

8 Q. Subsequent to obtaining his licence in
9 May, 1957, would you briefly describe what the man's
10 career was?

11 A. Subsequently or previous to?

12 Q. Subsequently to the temporary pilot's
13 licence; was he involved in any casualty?

14 A. Yes, he was involved in a grounding on
15 October 12th, 1957 and he was suspended for two weeks.

16 Q. What was the name of the vessel?

17 A. The Britamoco.

18 Q. Would your files show the circumstances
19 surrounding this grounding?

20 A. Not this file, Mr. Jacques, no, but
21 the letter addressed to the supervisor states that the
22 Authority considers that there was no acceptable
23 explanation for allowing the vessel to go ashore under
24 the circumstances prevailing at the time and that the
25 pilot's account of what took place clearly indicates a
26 lack of a sense of responsibility in the carrying out of
27 his duties as a pilot.

28 Q. And he was suspended for two weeks?

29 A. Correct.

30 Q. When the two weeks were over was he



1 reissued again a temporary licence?

2 A Yes.

3 Q. What is the next incident in the man's
4 professional life?

5 A. He was involved in a grounding of the
6 SS SKARAAS.

7 Q. Yes, of what date?

8 A. On October 29th, 1957.

9 Q. I am sorry -- both groundings in the
10 same month?

11 A. Yes. This second grounding took place
12 before Mr. Malenson, the supervisor, received the letter
13 instructing him to suspend the pilot. It was on the
14 very day that this letter was written.

15 Q. Would you be able to tell us the
16 circumstances surrounding this second grounding, or the
17 findings of the investigation, if any were held?

18 A. Yes. I do not know whether I should,
19 my lord, go over the details of these cases. These
20 were inquiries held for the Minister's information, for
21 the information of the Pilotage Authority. I could
22 give the findings.

23 Q. Give the findings; I am not interested
24 in the detailed inquiry. I am interested in the
25 opinion which was formed by the Commission of Inquiry.
26 You gave us the conclusion at which the first inquiry
27 had arrived and I wonder if the second one corroborated
28 the first one?

29 A. The Montreal Pilots' Committee
30 expressed the opinion that this pilots' licence should be



1 permanently cancelled on the ground of his habits. It
2 was pointed out to them that they had interceded on his
3 behalf for his reinstatement when he was suspended during
4 his apprenticeship. They said that they admitted this
5 and they said they had been quite wrong and they
6 regretted it. But in this particular instance now
7 the recommendation was that his licence be cancelled.

8 Q. What happened? For how long afterwards
9 was he allowed to pilot?

10 A. I beg your pardon?

11 Q. We have now reached the end of October,
12 1957. You had a recommendation that his licence be
13 withdrawn from the Commission of Inquiry. You had the
14 same recommendation from the United Montreal Pilots.
15 Was his licence cancelled then?

16 A. Of course, he was on suspension then
17 from the previous casualty from October 29th, or as
18 soon as he got ashore from this ship.

19 Q. Was he allowed to continue his work as
20 pilot after that?

21 A. I am told by Captain Jones that he
22 disappeared at that moment so he was not piloting for
23 a while.

24 Q. Subsequent to his reappearance ---

25 A. The Department asked the supervisor to
26 try to obtain written statements from witnesses who had
27 seen the pilot in a certain state, but these were other
28 pilots and they were reluctant to make any written
29 statement.

30 Yes, here it is. A letter was written on



1 December 2nd, 1957 to this pilot informing him --- This
2 answers the question that you were asking, Mr. Jacques,
3 so I could leave this here. This letter informed him
4 that his temporary licence was withdrawn and that it
5 was not the intention of the Pilotage Authority to
6 issue a further licence to him. It also mentions that
7 the pilot had not presented himself at the superintendent's
8 office as provided since the casualty, so he did not
9 pilot after this casualty.

10 Q. I see; thank you. For the clarification
11 of the record, he never piloted again after that? That
12 was the end of his career as a pilot?

13 A. This is correct.

14 CROSS-EXAMINATION BY MR. BRISSET:

15 Q. Captain, when the time comes to issue
16 a temporary licence is the record of the applicant
17 during his apprenticeship reviewed?

18 A. Oh, yes. The issuance of a pilot's
19 licence depends upon satisfactory behavior, if you
20 like, as an apprentice pilot.

21 Q. When you say "satisfactory behavior"
22 does that include not only his ability as a pilot but
23 also his character and personal habits, and I have
24 particularly in view drinking?

25 A. Yes, it does include that.

26 Q. Before and during apprenticeship a
27 prospective pilot will serve at sea; is that not the
28 usual practice?

29 A. Yes.

30 Q. When he is given his apprentice licence



1 does the Department check on his previous record at sea
2 and examine his discharge book?

3 A. Yes. He has to have a proper
4 testimonial showing that he is of good character. This
5 is required by the by-law.

6 Q. If the discharge book shows that in a
7 number of instances the master of the ship on which he
8 has served has refused to report, what would be the
9 attitude of the Authority in this regard? Would that
10 be justification to refuse the licence, or will the man
11 still be given a chance?

12 A. He would be given every chance, of course,
13 but it would certainly raise questions in the minds of
14 the Department.

15 Q. Questions being raised in the minds
16 of the Department by reference to a discharge book
17 containing bad discharges or refusal of the master to
18 report, will there be special investigation made to
19 determine the reasons and what was wrong?

20 A. They will be questioned on this point
21 and of course if this was an incident that had happened
22 some years before -- you cannot blackball a man forever
23 for something he has done in his youth, as you might
24 say.

25 Q. Will those questions be directed to the
26 prospective pilot himself or his former employers
27 generally?

28 A. To the pilot himself anyhow, but also
29 in any way that would be available. It might be
30 difficult sometimes to be in touch with the former



1 employers in the case of deep sea vessels, as you know.

2 CROSS-EXAMINATION BY MR. LANGLOIS:

3 Q. Tell me, Captain Slocombe, what do you
4 consider to be the incidents in a record? When you
5 look at a pilot's record what do you look for exactly?

6 A. While he is a pilot?

7 Q. Either as an apprentice or after he
8 has ---

9 A. While he is in the pilotage service?

10 Q. Yes.

11 A. Of course, in the matter of an
12 apprentice, he is not piloting. You cannot speak of
13 his prowess as a pilot, but it is his conduct and his
14 general apparent suitability that would be dealt with
15 there -- his general conduct as an apprentice, his
16 keenness in his work and so on.

17 Q. When he is a pilot do you consider that
18 if he has been involved in an accident for example that
19 this is a bad mark on his record, or do you distinguish?

20 A. Oh, it is a bad mark on his record, of
21 course, unless he is exonerated from any blame in the
22 matter.

23 Q. Do you try to find out why he has been
24 exonerated, whether it is due to the fact that you think
25 he is innocent or due to lack of evidence?

26 A. We try to. This, of course, is very
27 difficult.

28 Q. What do you consider, Captain, to be
29 an accident-prone pilot?

30 A. Apparently I misunderstood the way this



1 term was used yesterday. I think counsel was meaning
2 a temporary tendency towards accidents generally. Now,
3 we have not considered that psychological factor yet.

4 Q. Do you not think, Captain, that a
5 pilot who has been involved in three or four accidents
6 who has been exonerated of all blame is an accident-
7 prone pilot?

8 A. No, I do not.

9 Q. You do not?

10 A. It is quite possible this might be
11 coincidence.

12 Q. Do you inquire also, captain, into the
13 past conduct of masters and mates before giving them
14 certificates?

15 A. Oh, yes. A man cannot get a certificate
16 unless he has a good record and if he has a discharge
17 book with a bad discharge in it it is looked at quite
18 closely to see how long ago it was and to see whether
19 he could have testimonials as to character since that
20 time which would indicate that he is a fit man to have
21 a certificate. This practice is followed in the same
22 way for a pilot.

23 DIRECT EXAMINATION BY MR. JACQUES:

24 Q. And moreover with respect to masters
25 and mates do you not require after they have obtained
26 their first certificate a letter from the master with
27 whom they serve with respect to their behavior in
28 general and their sobriety?

29 A. This is required at the time of the
30 examination, yes.



1 THE CHAIRMAN: If I can sum up, the withdrawal
2 of a licence is considered to be a disciplinary measure
3 and not a safety measure?

4 THE WITNESS: It might be either, my lord.

5 THE CHAIRMAN: How is it considered as a
6 safety rather than a disciplinary consideration?

7 THE WITNESS: Generally speaking it is
8 disciplinary because generally speaking the fact of a
9 man having been at fault in one case or two cases with
10 hundreds of successful trips in between does not
11 indicate to us that he is not safe to be on the bridge
12 of a ship.

13 THE CHAIRMAN: That is what I mean. You have
14 to establish that he is not safe?

15 THE WITNESS: We would have to before we
16 could suspend him.

17 THE CHAIRMAN: You would not look at the
18 safety angle and say:

19 "Well, we do not know why
20 this man is always involved in
21 accidents. Apparently it is not
22 his fault but it is always him
23 who is involved in an accident,
24 although we cannot pinpoint the
25 reasons why it is he who is
26 always involved; so therefore
27 he is a security risk and we
28 are not going to allow him to
29 pilot any more, although we have
30 no reason we can pinpoint."



1 THE WITNESS: I doubt very much if our
2 lawyers would support our withdrawing a licence on that,
3 my lord.

4 THE CHAIRMAN: Because withdrawing a licence
5 is a disciplinary measure and any doubt has to be in
6 favour of the pilot. If it were considered security
7 wise any doubt would be against the pilot?

8 THE WITNESS: This is correct, my lord.

9 MR. LANGLOIS: I think, my lord, that the
10 danger there is that we tend to interpret the word
11 "accident-prone" in an insurance sense, where an
12 insurance company can accept a risk at whatever price
13 it feels is adequate. In this case only once the
14 pilot has been granted the licence he is entitled to
15 it and the Authority must prove he has been negligent.

16 THE CHAIRMAN: Maybe the concept is wrong.
17 Maybe it should be changed. We have to bear in mind
18 that at the beginning of pilotage the master was the
19 one responsible to make his choice of the pilot. Either
20 he knew a pilot in the locality or he relied on
21 information given by other masters and so on. Now the
22 Government has taken that privilege away from the master
23 and the Authority, the Government has told the ship
24 owners and the masters:

25 "You are going to take the
26 pilot we are going to assign, not
27 any other pilot".

28 So therefore there has to be a guarantee by the
29 Authority that this pilot is competent, because they
30 have taken away the liberty of the masters to choose.



1 So I think it is a question of security and
2 it is the responsibility of the Authority. It is
3 different from the mere question of rights of the
4 pilot. Maybe in the context of the law we have now
5 you are right, but I am just wondering whether it is
6 true and whether it is equal with the real concept of
7 pilotage as a public service.

8 COMMISSIONER SMITH: I think too, my lord,
9 that some thought might be given to the fact that the
10 so-called accident-prone pilots in a series of
11 investigations one following the other, he is always
12 given, as he is entitled to have, the benefit of the
13 doubt. There might be borderline cases where his
14 guilt is not established. On that account he is
15 absolved of all blame. But nevertheless there might
16 be some grounds for believing that he was at fault,
17 but being entitled to the benefit of the doubt, then
18 he is absolved from all blame. It would seem to me
19 that where there are a series of investigations and
20 the pilot is freed each time there are some grounds
21 for suspicion that he should be watched very very
22 carefully. Perhaps that is what they do; I do not know.

23 THE CHAIRMAN: I am trying to find the
24 section that says whether he was convicted or not he may
25 be suspended or his licence cancelled.

26

27 --

28

--

29

30

--



1 MR. JACQUES, Q: Article 370, my lord.

2 The concept of investigation of accident prone pilots
3 or even accident prone masters, mates and engineers
4 exists in the law as it is now. Perhaps it is not
5 clearly stated. It is not stated in so many words
6 but it exists under section 579, which empowers the
7 Minister to cause an inquiry to be held when he has
8 reason to believe that the master, mate or engineer is
9 through incompetence or misconduct unfit to discharge
10 his duties. It might be used within that question
11 which has been debated.

12 A. We have used this section, as you know,
13 my lord, 568 and 579 but this has been questioned. I
14 don't know why. I don't understand but apparently
15 there is some question of whether this should be used
16 for a pilot.

17 Q. The next question, question No. 10.
18 Would you explain fully the proposals of the target
19 income and guaranteed annual income and state whether
20 they are the same thing; because the wording "target
21 income" has been bandied about ever since we started
22 hearings in Montreal and no clear cut statement has
23 ever been made of what a target income would be; how it
24 would work.

25 A. Yes. I think this is explained quite
26 clearly. I think Mr. Cumyn explained this and I also
27 stated that this target income was as yet a hypothetical
28 amount.

29 Q. I am sorry I must interrupt you. The
30 question was framed before we heard Mr. Cumyn.



1 A. This is right but I think that all that
2 can be said has been said on this but I can repeat.
3 This was a hypothetical concept which was intended to be
4 decided ~~by~~ negotiations between the Shipping
5 Federation or the employers and the pilots. It did not
6 go any further than merely the hypothesis and the idea
7 was that the pilots and the employers would agree on a
8 median income, an annual income. Of course, this would
9 be subject to change from time to time. They would
10 agree on a median income and there would be an area of
11 flux that if it fell below a certain amount less, then
12 steps would be taken to increase the tariff so as to
13 bring it up. If it went over a certain amount above
14 the median then steps would similarly be taken to
15 reduce the tariff.

16 There was never any concrete proposal with
17 respect to what income ---

18 THE CHAIRMAN: Excuse me before you go on
19 to that. I think there was also to be a criterion as
20 to the work load and work conditions.

21 THE WITNESS: This is correct, my lord.

22 THE CHAIRMAN: They had to go together.

23 THE WITNESS: This, of course, would be by
24 negotiation between the employers and the pilots.

25 THE CHAIRMAN: Because we are told, and at
26 first blush I think it is quite right, that they had
27 to have incentive to work more than when at a flat
28 salary, for instance. On a flat salary they have no
29 incentive to work more. Normal human reaction would be
30 to just, in that case, better the conditions of work



1 and therefore although there might be some strain and so
2 on they would avoid it; so there has to be incentive
3 there so the target income would have to take care of
4 the work load also.

5 THE WITNESS: This is correct, my lord.
6 This, of course, was envisaged but this is as far as it
7 went. There is nothing more to say on this. It just
8 didn't go any further than mere suggestion.

9 MR. JACQUES, Q: In order that we may be
10 all clear on this picture. There was no concrete
11 proposal with respect to what the income should be,
12 no figure was arrived at.

13 A. Not arrived at. There was, as has been
14 stated, mention in the letters to the Quebec district
15 of the figure. This was not a concrete figure, as you
16 refer to it.

17 Q. This was a figure which was subjected
18 to change through negotiations, if negotiations did come
19 about.

20 A. That was the idea.

21 THE CHAIRMAN: An idea thrown into the
22 negotiations in order to start them off.

23 MR. JACQUES, Q: ~~Yto~~ start something. At
24 the same time there was no mention what the work load
25 of the pilot would be but it was not stated with the
26 present work load ---

27 A. Oh no. This was left to the
28 negotiations. Obviously it would have to come into the
29 negotiations.

30 Q. Of course. I just wanted to know



1 whether this had been discussed.

2 A. Oh no. It was not sufficiently firm
3 enough anyhow.

4 Q. Is the target income the same as the
5 guaranteed annual income?

6 A. No. Well, yes, in effect it would be
7 but I couldn't say that when this term was used that
8 it was exactly the same thing. I am not sure.

9 THE CHAIRMAN: I would say that the target
10 income is guaranteed in one sense of the word in that
11 it would be readjusted in the next year but for that
12 year it would be a loss if it fell below the target
13 income. It would be a loss if it fell in that year.

14 THE WITNESS: Within limits.

15 THE CHAIRMAN: And that the guaranteed salary
16 would be the government would make up the loss for that
17 part of the year, so that is the difference.

18 THE WITNESS: I don't even know whether that
19 is the suggestion made. I think there was this area
20 of flux which was supposed to make provision for
21 ordinary fluctuations in traffic.

22 THE CHAIRMAN: But the guaranteed minimum
23 income is not new in pilotage because we have had
24 evidence of that in Saint John, New Brunswick where after
25 the war for a few years there was a question in the
26 estimates of a minimum income for those pilots, even
27 if the dues were not subject to payment but anyway it
28 happens that the income was always higher than that and
29 the estimates were cancelled.

30 THE WITNESS: This was correct, my lord.



1 COMMISSIONER SMITH: Captain, following the
2 Audette report, were there some representations made
3 by the Department to the government for a guaranteed
4 annual income, which was frowned upon by the government?
5 I am not sure whether there were or not.

6 THE WITNESS: I don't think so, Mr. Smith.
7 I don't think this was one of the recommendations of
8 the Audette committee.

9 COMMISSIONER SMITH: No, I don't think it
10 was but there were other matters involving the question
11 of money, pensions and so on. I had the impression that
12 this was put up with the others to the government
13 although it was not a recommendation of the Audette
14 committee.

15 THE WITNESS: I don't know if this was
16 mentioned, Mr. Smith but this matter of income was taken
17 care of by the absorption by the government of the
18 pilot boat costs.

19 COMMISSIONER SMITH: About that time?

20 THE WITNESS: Yes.

21 COMMISSIONER SMITH: Thank you.

22 MR. JACQUES, Q: With respect to the mention
23 of guaranteed annual income, I should like to read from
24 appendix 59 of the Shipping Federation brief, which
25 is Exhibit 726. This is a telegram from the chairman
26 of the Pilotage Committee of the Shipping Federation of
27 Canada to Mr. Baldwin, secretary, dated December 29th,
28 1960 and I quote:

29 "Referring to your letter
30 of December 28th and our conversation



1 of today, we consider it --"

2 'we' being the Shipping Federation --

3 "of vital importance that the

4 decision be reached by the

5 Minister as to whether the

6 concept of dealing with the

7 pilots' requests in terms of

8 annual income for the pilots

9 and their separation from any

10 concern in the tariff

11 structure, is acceptable or

12 not to the government."

13 A. What is your question, Mr. Jacques?

14 Q. Well, is that mention of guaranteed

15 income the same as target income? My understanding

16 of the problem is that target income did not imply any

17 guarantee of a specified income.

18 A. No, I don't think that -- this was the

19 dodge in my mind. I don't think it is exactly the

20 same thing. It is another allied suggestion as to a

21 possible mode of procedure.

22 Q. This apparently has been discussed by

23 Mr. Baldwin and the Chairman of the Pilotage Committee

24 of the Shipping Federation. Do you have any record of

25 those discussions?

26 A. Nothing further than what is probably

27 reported there.

28 Q. Well, there is a letter of December

29 28th at least in your file?

30 A. I can say these matters were talked



1 about generally but nothing was -- no conclusions were
2 arrived at before the appointment of the Royal
3 Commission and there have been no discussions since this
4 time.

5 Q. So am I right in assuming that these
6 ideas of target income and guaranteed annual income and
7 what not were just suggestions thrown into the discussions
8 by either the government or the Shipping Federation?

9 A. Oh yes, this is correct.

10 Q. But there was no serious or even any
11 study made of these problems before suggesting that.

12 A. No, these were suggestions ---.

13 Q. Yes, but you can make suggestions in
14 several ways. You can throw out an idea or you can
15 arrive at a meeting fully prepared to discuss your
16 suggestion with facts and figures [and] detailed
17 information.

18 A. No, to my recollection it was never a
19 considered result put forward as a concrete proposal.
20 These were general suggestions which, of course, would
21 have to be discussed with the pilots in any case.

22 MR. LALONDE, Q: Captain, obviously there
23 is a difference between deciding on an idea or formula
24 or a general principle, let us say such as target
25 income, to use that expression, and the decision that
26 in a particular instance the target income would be
27 \$10,000.00, \$12,000.00 or \$16,000.00 obviously; and if
28 we referred to the two letters sent by the Deputy
29 Minister. The first one sent to all districts puts
30 forward the idea in some form of a target income and I



1 think the second letter sent to Saint John and Quebec
2 districts indicated a specific percentage was to be
3 deducted from their earnings. Would you say that in
4 the first instance the decision was arrived at while
5 in the second instance the percentage mentioned was
6 more as a suggestion for negotiations or discussions?
7 Would you make a difference between the two or would
8 you consider that that was only suggestions from the
9 start?

10 THE WITNESS: I think the wording implies
11 that, Mr. Lalonde. If you look at the wording of those
12 letters I think in each case it says that "something
13 has to be done" and that this has been suggested and
14 the pilots were invited to give comments. I think this
15 is correct.

16 MR. LALONDE: So that in your view in the
17 first instance you would make the suggestion as to the
18 principle and then the second subject would be
19 suggestions as to a specific amount? The Department
20 would have decided to make a specific proposal or
21 suggestion of a specific amount while the principle
22 itself was still not decided upon.

23 THE WITNESS: Yes. This was going a little
24 farther along the same lines.

25 CROSS-EXAMINATION BY MR. BRISSET:

26 Q. Captain, would you agree with me that
27 the concept of target income or guaranteed annual
28 income as submitted by the Shipping Federation of
29 Canada never resulted in any concrete proposals with
30 figures and so forth because the pilots never wanted to



1 accept the principle that tariffs should be a matter
2 to be discussed only between the Department and the
3 shipping interests. Is that putting it fairly?

4 A. I think that this was one of their
5 objections anyhow, that they did not like the idea put
6 forward to them.

7 Q. Is it not a fact that in 1962 at the
8 time of the strike it was agreed that the tariffs would
9 be frozen and that as one of the factors that brought
10 about the end of the strike/^{and}the pilots in the meantime,
11 I think during those three years, would study this
12 concept of target income?

13 A. Yes, they did mention this, they would
14 be prepared to study it.

15 MR. LALONDE: If you refer to the documents
16 in this particular case of the strike of 1962, I submit
17 to you that the proposals were made and negotiations to
18 begin with for the freezing -- the voluntary freezing
19 of the tariff and the study of the matter and that this
20 was turned down.

21 THE WITNESS: Yes, I am not saying that was
22 the final ---.

23 MR. LALONDE: And in the final agreement
24 there was simply the freezing of the tariffs for three
25 years and a settlement of various questions. There
26 was no mention whatever of studying this matter apart
27 from the establishment of the Royal Commission. Quite
28 obviously it was necessary to establish that?

29 --

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1 THE CHAIRMAN: Next question?

2 DIRECT EXAMINATION BY MR. JACQUES:

3 Q. Question No. 12, with respect to
4 negotiations I should say of tariff ---

5 THE CHAIRMAN: Are you skipping No. 11?

6 Q. No, I am sorry, my lord, I didn't mean
7 to skip 11.

8 Question 11: Explain fully political influence
9 referred to by witness in volumes 104 and 105 of the
10 evidence.

11 A. I have looked up these volumes of
12 evidence, and I find I am being asked to explain fully
13 something that Mr. Colley said was told to him by the
14 Deputy Minister.

15 Q. Yes.

16 A. I am afraid I have nothing to comment.

17 Q. You have not spoken to the Deputy
18 Minister with respect to this question?

19 A. Not on that point, no.

20 Q. Would you take it up with him, please?

21 A. No, I will not.

22 Q. Why not?

23 A. I don't think this is a question that
24 should be asked.

25 Q. Why not?

26 THE CHAIRMAN: Not from Captain Slocombe.

27 Of course it might be interesting to know from the
28 Deputy Minister unless he declines to answer that. If
29 he declines to answer that, then we will see the reasons
30 given by the Department counsel, and then we will



1 decide.

2 MR. JACQUES: Very well, my lord.

3 THE CHAIRMAN: This may be a very crucial
4 point. We have seen evidence on the local commissions,
5 and I think Captain Slocombe testified about that, that
6 the local commissions on the New Brunswick coast are
7 run by political influence. The day the government is
8 changed so is the local commission down there, and in a
9 few days, the pilots also. So I don't know whether
10 security-wise it is very good.

11 In any event, this is evidence we have before
12 us, and it is the policy also from what we have been
13 told the Department here would abide by the
14 representations of the local Member of Parliament.

15 THE WITNESS: I think, my lord, we must
16 accept the right of any citizen to enlist the aid of his
17 Member of Parliament to push any scheme he may have.
18 Now, this may be just what the Deputy Minister ---

19 THE CHAIRMAN: If it were a case before the
20 court, would that still be true?

21 THE WITNESS: Oh, I don't know, my lord.

22 THE CHAIRMAN: Well, it is a question of
23 administration, public security and public service, I
24 don't know whether it is good or not. In any event, it
25 was mentioned there as something we have to look into,
26 and it should be taken up with the Deputy Minister because
27 it has been put in his mouth.

28 THE WITNESS: Yes, my lord.

29 THE CHAIRMAN: Any remarks or suggestions, Mr.
30 Brisset?



1 MR. BRISSET: I don't know whether this
2 should go in the record, but I was involved in a case
3 yesterday concerning an accident which occurred on the
4 east coast, and I learned at the last change of
5 government the pilots that were serving in that
6 particular place were replaced by the local garage
7 mechanic. I just mention this although I do not feel
8 perhaps ---

9 THE CHAIRMAN: We have been told also very
10 often decisions of the advisors to the Authority are
11 being changed at top level for no known reasons. Maybe
12 that would be the explanation. Maybe not.

13 MR. JACQUES, Q: Well, without asking
14 you to explain the statement made by Mr. Colley which
15 reports the statement of Mr. Baldwin, yet the
16 implications in that statement are far-reaching, and I
17 should like to read that statement. I quote:

18 "The Deputy Minister told
19 us that while the Department
20 basically agreed with our views
21 that we must appreciate that
22 the pilotage organization, the
23 corporations, have some political
24 influence that was rather lacking
25 on our side."

26 Now, you have been involved in pilotage for
27 how many years?

28 A. Nearly twenty-five years to some
29 extent.

30 Q. Twenty-five years in one way or another?



1 In the course of that twenty-five years have you not
2 become aware of changes in decisions or decisions
3 themselves based on politics in the sense that we give
4 to politics, the influence of a political organization,
5 influence of a Member of Parliament.

6 THE CHAIRMAN: Extraneous motives.

7 THE WITNESS: A decision made by the
8 pilotage authority is made on his own premises, and he
9 uses all the information and all the representations
10 which may be made to him.

11 Now, we are not aware of the basis on which
12 the final decision is made. All we can do is to put
13 forward the facts and make recommendations.

14 THE CHAIRMAN: You are merely advisors.

15 THE WITNESS: Exactly, my lord. We wouldn't
16 know what the main reason was for a decision of the
17 Pilotage Authority.

18 MR. JACQUES, Q: Am I right then in saying
19 that when a problem arises you study the problem and
20 you hand over to the Pilotage Authority a file on that
21 particular problem, the result of your study, the facts
22 you have been able to find?

23 A. Correct.

24 Q. With a suggested course of action?

25 A. Correct.

26 Q. Am I right in saying that your
27 suggestions are not always accepted by the Pilotage
28 Authority?

29 A. Oh, yes. They are not even always
30 accepted by my superiors between myself and the Pilotage



1 Authority.

2 Q. When your suggestions are not accepted
3 or when your suggestions are modified, in every instance
4 you never know why? You never find out why?

5 A. No, we don't know. It appears on the
6 file that this has been ordered, and we don't know why.
7 It is frequently just that the persons above me do not
8 agree with my conclusions. This is quite in order.

9 Q. You know one reason why it was not
10 accepted?

11 A. I beg your pardon?

12 Q. Then you know sometimes why your
13 suggestion was not accepted?

14 A. In those cases it is sometimes clear,
15 but not always.

16 Q. And apart from that you never know why
17 the Pilotage Authority does not follow the advice of its
18 advisors?

19 THE CHAIRMAN: I don't think it would be
20 fair for the witness to get into that, to make a trial
21 of his authority, of his superiors.

22 MR. JACQUES: I look at it from an
23 administrative point of view.

24 THE CHAIRMAN: I think we have enough
25 evidence on that. I think even Captain Slocombe gave us
26 lots to think out in his previous testimony,

27 MR. JACQUES: Yes, and I might finish my
28 statement, that there is a group of advisors doing their
29 best to operate efficiently a given system. They make
30 suggestions to higher authority; higher authority does



1 not accept this suggestion, and suggests another course
2 of action. Now, I submit that an efficient organization
3 would try to find out why their suggestion was not
4 accepted in order that in the future they may be able
5 to advise the authority all the better, knowing, let us
6 say, the political aspect in the original sense of
7 "political", what is the policy which is laid down by
8 the Pilotage Authority.

9 THE CHAIRMAN: Should we not ask that from
10 the Authority itself?

11 MR. JACQUES: My lord, we should ask the
12 Authority itself what was its policy, but we should ask
13 of the advisors if they have themselves tried to fathom
14 this policy.

15 MR. LALONDE: My lord, I think there is
16 something in which I would not quite agree with my
17 friend as to what he said as to the role of the advisor
18 to the Pilotage Authority. As a former civil servant
19 I can say I do not think that the role of the advisor
20 is to pattern their advice on what they think the
21 policy of their superiors would be, but rather to
22 suggest what they think would be an appropriate
23 recommendation with the facts they have at their
24 disposal.

25 THE CHAIRMAN: Right.

26 MR. LALONDE: And the higher echelon will
27 have to take broader consideration into view in making
28 their decisions on other factors which the lower
29 echelons in the administrative set-up may not be aware
30 of or may not have thought of.



1 The role of the officials is to advise with
2 the information they have, with the evidence they have
3 obtained. Also I submit that the expression "political
4 influence" is very broad and very difficult to assess.

5 THE CHAIRMAN: It may be very good. The
6 local man knows everything about local problems, is it
7 going to be a reflection on the economy of the place
8 and so on. These are all factors that have to be
9 considered that the Authority advisors may not be aware
10 of.

11 MR. LALONDE: The term could be used in all
12 kinds of sense. Even appointments of counsel to
13 royal commissions could be referred to as political
14 influence. Nobody would suggest that this is
15 necessarily bad.

16 MR. JACQUES: Also the appointment of
17 commissioners of inquiry I might say.

18 THE CHAIRMAN: All this subject is arising
19 from a statement from Mr. Colley to the effect that
20 the Deputy Minister told him this and that.

21 MR. LALONDE: Yes.

22 THE CHAIRMAN: I think the only one who could
23 explain that is the Deputy Minister if he wishes to come.
24 If he does not wish to come, then his counsel will say
25 why, and then we will decide. I think it is unfair
26 to the witness to ask him what the Deputy Minister may
27 have thought of when he said that.

28 MR. LALONDE: I quite agree.

29 MR. JACQUES: I might point out that the
30 series of questions were not directed to the witness.



1 They were directed to the Deputy Minister himself, who,
2 in his wisdom, saw fit to delegate Captain Slocombe
3 to answer the questions.

4 THE CHAIRMAN: Well, Captain Slocombe can't
5 answer that.

6 MR. JACQUES: Therefore we shall reserve
7 it for the Deputy Minister.

8 Q. Question No. 12. That should be a very
9 easy one, which the Deputy Minister would have delegated
10 to you.

11 A. Well, I think it is safe to say in
12 this respect under the present arrangements, under the
13 present pilotage set up, the Department has felt that
14 the negotiations should take place between the shipping
15 people who are paying the money and the pilots who are
16 receiving it.

17 THE CHAIRMAN: Of course you are not talking
18 there about pilots in the Great Lakes?

19 THE WITNESS: Oh, no, my lord. This is under
20 the present set-up -- apart from the Great Lakes.

21 THE CHAIRMAN: Why?

22 THE WITNESS: Why?

23 THE CHAIRMAN: Why do you make a difference
24 with the Great Lakes?

25 THE WITNESS: Because, as your lordship
26 knows, it is a completely different concept of employment.
27 Great Lakes men are employees of the government directly,
28 and they are treated the same way as any other
29 government employee.

30 THE CHAIRMAN: They have a salary, and



1 therefore their salary is not affected by the tariff,
2 so even if the operation is in deficit, they are not to
3 worry about that at all?

4 THE WITNESS: This is correct.

5 THE CHAIRMAN: It is contrary in the other
6 districts where there is a relation between the tariff
7 and the take-home pay at the end of the season?

8 THE WITNESS: Yes.

9 THE SECRETARY: For the record, my lord, this
10 is not the case in all the districts in the Great Lakes.

11 MR. JACQUES: Rates on the lakes are joint.
12 They don't merely apply to civil servants. That is,
13 pilotage is not restricted to civil servants.

14 THE CHAIRMAN: It was only for the Canadian
15 pilots; not the others.

16 MR. JACQUES, Q: The negotiations are
17 joint. This is not done with the thought in mind that
18 this is just an operation to provide funds for Canada?

19 A. No.

20 Q. The view of the Department under
21 existing by-laws, mind you, is that these negotiations
22 should take place directly between ship owners'
23 representatives and the pilots' representatives?

24 A. With the cognizance and with the
25 assistance you might say of departmental representatives.

26 Q. I see.

27 A. And then in the hope that some agreement
28 will be reached. If there is no agreement reached,
29 then of course the Pilotage Authority must make a
30 decision. It simplifies matters when both sides come



1 to an agreement.

2 Q. And the Authority would not play an
3 active role except as a mediator between the two
4 parties?

5 A. This has been the concept.

6 Q. Concept of mediation?

7 A. Correct.

8 Q. And to take independent action only
9 in the last resort?

10 A. Only in the case of deadlock.

11 COMMISSIONER RENWICK: Might I ask, my
12 lord, if that practice is not followed in British
13 Columbia?

14 THE WITNESS: Yes, this is followed in
15 British Columbia.

16 THE CHAIRMAN: But they are complaining about
17 it. The Vancouver Chamber of Shipping does not like
18 to be placed in a position to negotiate tariffs with
19 the pilots because they are not talking the same
20 language. One is talking about remuneration and the
21 other is talking about costs of the service to shipping,
22 and what kind of service and what type of service should
23 be given, so they object quite bitterly to it.

24 MR. JACQUES, Q: Has there been any
25 evolution in the past in the concept? Has it always
26 been the same?

27 A. Yes, I would say so. This has been
28 generally since I have been in pilotage anyhow.

29 Q. Question 13, file, if any, results
30 of investigations by Captain Gendron on pilots' expenses



1 referred to by witness.

2 A. Questions 13 and 14 can be taken
3 together, Mr. Jacques?

4 Q. Oh, yes.

5 A. We have searched our files and we have
6 not found any statement by Captain Gendron. I mean any
7 written statements setting out this, although we have
8 references to it. But Captain Gendron was instructed
9 by Mr. Cumyn to make a close study of this matter. I
10 think the term used was to follow a pilot around, as it
11 were, for a period of time just to arrive at some --
12 to resolve this argument which has been going on for
13 quite a time about the expenses actually incurred by
14 the pilots.

15 Captain Gendron did this. I know the results.
16 This was that a reasonable amount to allow for this
17 purpose would be \$1,300.00 for the season in Montreal
18 River and Quebec, \$1,500.00 in Montreal harbour and
19 \$700.00 in the Cornwall district.

20 Q. Why \$1,500.00 in Montreal harbour?

21 A. This I believe was because of the
22 greater number of taxis that they had to take.

23 Q. Don't they get paid for taxis in
24 Montreal?

25 A. It was separated at one time, but it
26 was incorporated in the general amount afterwards.
27 However, I think this was the reason for the extra
28 amount.

29 In any case, in a meeting with the
30 pilots this was very much discussed with each of these



1 pilotage districts. Mr. Lalonde was present, and after
2 discussion, the Montreal river and Quebec amount was
3 rasied to \$1,600.00.

4 Q. From \$1,300.00?

5 A. From \$1,300.00.

6 Q. To \$1,600.00?

7 A. To \$1,600.00, and the Montreal harbour
8 amount was raised from \$1,500.00 to \$1,600.00.

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1 And the Cornwall amount was raised from \$700.00 to
2 \$1,000.00. The pilots still did not express their
3 satisfaction at this meeting, but at least this was the
4 result of the meeting.

5 MR. LALONDE: And Captain Gendron was there
6 too?

7 THE WITNESS: Yes. He explained at the
8 time, I believe, to the meeting how he had done this.
9 But I have not a record of it.

10 MR. JACQUES, Q: You have no record of
11 that?

12 A. Yes, I have a record of the meeting.

13 Q. No, of how he arrived at these figures?

14 A. I think in the case of Quebec this
15 was \$10.00 for each night spent at Les Escoumains and
16 so on, but there are only two items mentioned and this
17 is not complete at all. Captain Gendron explained
18 to the meeting how he did it and it included \$10.00
19 per diem for room and board at Les Escoumains and
20 \$6.00 for taxi allowance for joining or leaving a vessel
21 in connection with a trip but not in connection with a
22 movage. He said that he had reviewed the records of
23 the individual pilots to determine the number of days
24 they were on station at Les Escoumains or Port Alfred
25 and so on. That is all the detail.

26 Q. Would your records show the reason
27 adduced by the pilots for an increase of \$300.00 in
28 the Quebec and Montreal allowance and \$100.00 in the case
29 of the Montreal pilots and \$300.00 in the case of the
30 Cornwall pilots?



1 A. No. This is just after discussion at
2 the meeting it was agreed that these amounts would be
3 raised. The Department was leaning over backwards in
4 this matter.

5 Q. And the pilots did not file with the
6 Department at that meeting any detailed statement of
7 their expenses?

8 A. No.

9 Q. They were just bargaining?

10 A. This is correct.

11 MR. JACQUES: Thank you.

12 CROSS-EXAMINATION BY MR. LALONDE:

13 Q. In effect did the meeting that took
14 place not analyze the figures brought forward by Captain
15 Gendron?

16 A. Yes, this is what I say. It was
17 apparently discussed at the meeting.

18 Q. And is it not a fact that the pilots'
19 representatives raised points which would have appeared
20 to be left out or forgotten by Captain Gendron in
21 certain instances? I remember particularly for instance
22 in the case of the Cornwall district the fact that
23 Captain Gendron had not inserted any allowance for
24 train travelling spring time and fall time when pilots
25 would be sent from Montreal to Cornwall and vice versa
26 to take ships. Do you remember that?

27 A. This is quite possible. There is no
28 record of it, but this was thoroughly discussed and as
29 a result of the discussion ---

30 Q. And is it not a fact that Captain



1 Gendron himself agreed that the figures ~~which were~~
2 that finally were arrived at would appear reasonable?

3 A. Oh, I think so, yes.

4 Q. When was that investigation carried on
5 -- what year?

6 A. The investigation of Captain Gendron?

7 Q. Yes?

8 A. This meeting was January 3rd, 1961, so
9 it must have been previous to that -- just previous.

10 Q. I notice that in the figures which you
11 have produced as part of Exhibit 1301 you have merely
12 reproduced these figures as such; they have not been
13 changed at all since 1961?

14 A. No. I said we are still using these
15 figures.

16 CROSS-EXAMINATION BY MR. BRISSET:

17 Q. Captain, just a small point. Is it
18 not a fact that when in the Cornwall district a pilot
19 goes by train from one station to the other the train
20 expenses are paid by the ship and not by the pilot
21 himself?

22 A. If he is ordered to do so by the ship,
23 that is provided under the by-law, yes, but I am not
24 sure whether this would be the case in the spring and
25 the fall when they are all going the same way.

26 Q. I am instructed that this is so.

27 A. This is so -- that it is paid for by
28 the ship?

29 MR. LALONDE: Is it not a fact that it is
30 the transportation which is paid but the other expenses



1 relating thereto are not paid -- hotel for instance --
2 because a fellow has been transferred from one station
3 to the other?

4 THE WITNESS: No, that would not be included.

5 MR. BRISSET, Q: There is also in the by-law
6 a taxi charge paid by the ship to proceed to St. Lambert
7 Lock?

8 A. Yes.

9 Q. Captain, from your evidence I can take
10 it, can I, that there is no support in your file to
11 establish the figures that you have quoted for the three
12 districts? All you can give us is the result of
13 general discussions at a meeting?

14 A. This is correct.

15 THE CHAIRMAN: Are there any further
16 questions on this subject?

17 We will adjourn now for ten minutes.

18 ---Short recess.

19

20 DIRECT-EXAMINATION BY MR. JACQUES:

21 Q. We are now going to start the series
22 of questions on inquiries and we will try to go as far
23 as we can with these problems. Owing to the absence
24 of Mr. McGillivray, if at any time you feel that you
25 have not got all the information, do not hesitate to
26 say so. It is mostly all leading questions which you
27 may not be prepared to answer. Do you think you could
28 deal with question No. 1 with respect to the procedure
29 outlined by Captain Gendron?

30 A. The answer to that, my lord, is that I



1 have no reason to say that Captain Gendron said anything
2 incorrect in his evidence.

3 Q. So on the facts alone, not necessarily
4 the law -- just put that aside for the moment -- the
5 facts as stated by Captain Gendron were the procedure
6 followed in these cases?

7 A. This is correct.

8 Q. Are you able to deal with Question No.
9 2?

10 A. Well, generally speaking when an
11 officer holds a preliminary inquiry it is under Section
12 555 of the Canada Shipping Act. The Minister may
13 appoint any person to make a preliminary inquiry --
14 and this is not only confined to a casualty incidentally.

15 Q. No. So inquiries which have been held
16 so far were ministerial inquiries?

17 A. Yes. The distinction has been pointed
18 out to me in this courtroom, but we had not kept this
19 distinction in mind.

20 THE CHAIRMAN: Between an Authority's
21 inquiry and a ministerial inquiry?

22 THE WITNESS: Correct, my lord. We have
23 felt it was the same thing where the Minister was the
24 Pilotage Authority. Maybe we were wrong in this.

25 MR. JACQUES, Q: Would you search your
26 file and find out whether any by-law was ever adopted
27 setting up a procedure for the holding of inquiries
28 before the Pilotage Authority under Section 329 (f)?

29 THE CHAIRMAN: This is whether the Authority
30 is a local one or is the Minister?



1 MR. JACQUES: It is applicable in all cases,
2 my lord. There is no distinction in the law between
3 the two types of pilotage authority.

4 THE WITNESS: Well, there is a reference
5 in the by-laws, of course, to ---

6 MR. JACQUES: Q: By the way, it is exact
7 that the Saint John by-law, the latest one, is more or
8 less the proto type for the other by-laws?

9 A. Pretty close.

10 Q. So if you please we shall refer to the
11 Saint John by-law.

12 A. I am advised, Mr. Jacques, that we had
13 better not make that statement because there have been
14 changes in legal attitudes, shall I say, and legal
15 opinion on the proper wording of by-laws and while this
16 was the intention when the Saint John by-laws were made
17 it was understood that this was to be the proto type,
18 we found through changes in personnel in the Privy
19 Council office we were not able to keep this as the proto
20 type.

21 Q. Well then, choose any one of the by-laws.

22 A. I do not know whether I misled you
23 there, Mr. Jacques. There is no mention of inquiries
24 in the by-laws. In the case of disciplinary measures
25 it is if the supervisor is satisfied or the Authority is
26 satisfied.

27 Q. To which by-law are you referring?

28 A. I am looking at the Saint John, New
29 Brunswick by-law.

30 Q. And what section?



1 A. Well, we have section 21 on the use of
2 liquor or drugs, and then 22 ---

3 Q. I will stop you there right away.
4 Section 21 sub-section (1) on the use of liquor and
5 drugs; that is the section you are referring to?

6 A. Yes.

7 Q. Would you know under what section of
8 the law this particular by-law was adopted?

9 A. 329.

10 Q. And which paragraph of 329?

11 A. I would say (f) -- make regulations for
12 the government of pilots.

13 Q. I would refer you to sub-section (f) at
14 paragraph (3).

15 A. Yes. That says:

16 "Without restricting the
17 generality of the foregoing."

18 But I would take that the "government of pilots" can
19 cover almost anything. This is my opinion.

20 Q. Well, I would suggest to you that the
21 wording of section 21 sub-section (1) of the by-law is
22 ultra vires because it exceeds by far the stipulations
23 of the law at section 329 paragraph (f) sub-paragraph
24 (3). You make an offence which is not mentioned in the
25 law. You create an offence in the by-law which is not
26 mentioned in the law. The law says that it is an offence
27 to act as a pilot while under the influence, whilst you
28 make it an offence ---

29 A. Excuse me, is he acting as a pilot when
30 he is about to go on duty? It also says:



1 "Acts as a pilot or
2 apprentice pilot while under
3 the influence of intoxicating
4 liquor or narcotic drugs while
5 on duty or about to go on duty."

6 Q. Yes, and you create an offence merely
7 in consuming intoxicating liquor and there is a vast
8 difference, as every lawyer will know, between consuming
9 intoxicating liquor and being under the influence of
10 intoxicating liquor -- except Maitre Lalonde. He shakes
11 his head and says No. Perhaps he does not know there
12 is a difference.

13 MR. LALONDE: I object to the statement
14 "every lawyer knows".

15 THE CHAIRMAN: Before going any further in
16 this question of inquiries into casualties and breaches
17 of regulations and so on, I would like to try to sum
18 up what is the situation of fact that we are looking
19 into. Here we are dealing with the Authority and also
20 the Department. Those are two different bodies who
21 could each have their own investigation procedure. The
22 Department is interested in casualties and is also
23 interested in the pilots' conduct, from what I can see,
24 and could hold its own investigation.

25 Then the other entity, who is the Pilotage
26 Authority, could also hold inquiries for his own
27 information, direction and needs, and those investigations
28 of the Authority could be for two main reasons. One
29 would be a strict court of inquiry, or something like
30 a court of inquiry, that is just to investigate into a



1 situation of fact in order to find the facts. There
2 could be also another kind of investigation into a
3 charge against a person. I think these are the main
4 lines of that. The Authority; two kinds -- fact-
5 finding of a factual situation just for the direction
6 of the Authority and the disciplinary angle of the
7 charge. But in order to do that the Authority has
8 to have powers by order-in-council which has to be put
9 into the by-laws, from what I can see under Section 329,
10 sub-paragraph (f), and apparently --- Well, you can
11 carry on from there.

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1 MR. JACQUES, Q: Have you any further
2 comments to offer on sub-paragraph 1 of section 21 of
3 the by-law?

4 A. No, except that we have understood that
5 this intra vires.

6 Q. While we are discussing section 21 of
7 the by-laws, would you move down to sub-section 2 of
8 section 21 and point out the section of the law under
9 which this sub-section was adopted?

10 A. I would say the same thing, Mr.
11 Jacques, under section 329, the government of
12 appointments.

13 Q. The opening sentence of sub-paragraph
14 (f).

15 A. This is my understanding.

16 Q. Now, sub-section 3 of section 21, would
17 you tell us under what section of the law that has been
18 adopted?

19 A. It is the same.

20 Q. Well, sub-section 4 of section 21 of
21 the by-law?

22 A. All these.

23 Q. All these?

24 A. All these. We understood this was
25 the province of the Pilotage Authority to make
26 regulations for the government of pilots.

27 Q. Always the opening line of sub-paragraph
28 (f) of section 329.

29 THE CHAIRMAN: The full paragraph, yes, up
30 to one.



1 THE WITNESS: This is a general clause.

2 THE CHAIRMAN: It says in the middle of
3 the paragraph:

4 "For the holding of inquiries
5 either before the Pilotage Authority
6 or any other persons into any
7 matters dealt with in this part."

8 This is part of sub-section (f) of section 329 and it
9 is stated this is to be the procedure or this is to be
10 provided for by the by-law, confirmed by the Governor-in-
11 Council. This is put in the by-law.

12 MR. JACQUES: After hearing the answers
13 from the witness, my lord, we are faced with the problem
14 which several municipalities have in most of the acts
15 attributable to municipalities. There is always a
16 section which gives very broad powers to the
17 municipality with respect to good government but the
18 courts have always restricted the extent of that section
19 and say it cannot be used to extend or amplify the
20 powers given elsewhere in the Act. I submit that
21 section 21 of the by-law is ultra vires because it
22 expands, extends or enlarges the offences which are
23 stipulated for in the sub-paragraph of paragraph (f)
24 of section 329.

25 THE CHAIRMAN: So, that is all right. You
26 have made a statement. We will consider it. It may be
27 a matter of argument and will be a matter of study for
28 us.

29 MR. JACQUES, Q: Now, coming back to
30 question No. 2. You stated that your investigating



1 officers acted under section 555 of the Canada Shipping
2 Act.

3 A. That is if he is holding a preliminary
4 inquiry, yes.

5 Q. A preliminary inquiry, yes, indeed.

6 THE CHAIRMAN: We are dealing here with the
7 department inquiries, not the Pilotage Authority
8 inquiries.

9 THE WITNESS: Yes, my lord. As I say we have
10 not differentiated.

11 THE CHAIRMAN: No. Well, if one is
12 satisfactory you need not have two systems. If one is
13 doing all right, why multiply the procedure.

14 THE WITNESS: Following your thought, my
15 lord, to be correct, we would hold an inquiry by the
16 Department and then the Minister would report to the
17 Pilotage Authority the result of the inquiry. However ---.

18 MR. JACQUES, Q: These legal questions
19 might prove very embarrassing to you because you have not
20 had legal training. I suggest that we skip several
21 questions and that we move to question 10. Question
22 10 now has been fully answered.

23 A. Yes, I don't think we have anything to
24 add to that.

25 Q. Question 11 I think has been answered
26 in part. There has been some discussion on that
27 revision committee which has been created.

28 A. This, as I understand it, or I
29 informed the court was not a formal committee.

30 Q. That is right.



1 A. It was merely a group of officers who
2 happened to be available to discuss things.

3 Q. Is it still in existence?

4 A. Not formally. Of course, we always do
5 discuss these things with each other. It never was
6 a formal entity.

7 Q. But Captain Gendron in his evidence led
8 us to believe that there was a certain structure to
9 that ---

10 A. According to this -- I am sorry.

11 Q. There was a certain structure to that
12 Revision Committee and that although it may not have
13 been a formal committee, there were rules which were
14 followed by everybody?

15 A. No, this was not the case. He was
16 mistaken there.

17 I may say I have read Captain Gendron's
18 evidence over. He mentioned he had suggested a sort
19 of board or committee and I can believe this is the
20 case. I seem to remember his mooted this to me at
21 one time. It was a good idea but it was not something
22 we could change at the moment and it could have been
23 following that that I suggested this idea; instead of
24 each individual officer making his own recommendation,
25 which might have been contradicted within our own
26 division, that we would go together and the recommendations
27 from the division would be my recommendation based on
28 the consensus.

29 Q. Of all the other officers?

30 A. Who were available to discuss the point.



1 Q. Where then would the file go? Would
2 it go to the next officer to whom you report or would it
3 go directly to the Pilotage Authority, who was the
4 Deputy Minister?

5 A. It will go from me to the Director of
6 Marine Regulations. From him to the Assistant Deputy
7 Minister, Marine. From him possibly direct to the
8 Deputy Minister or as we would call him now the
9 Assistant Deputy Minister General. It was the senior
10 Assistant Deputy Minister. Sometimes a file will go to
11 Mr. Baldwin. He would send it back to Mr. Booth as
12 senior Assistant Deputy Minister and who was also a
13 lawyer and Mr. Booth very conscientiously scrutinized
14 these things and often tore them to pieces.

15 Q. The file which is passed on to the next
16 senior officer, does it contain only a summary of the
17 person who passes the file which is recommendation or
18 does it contain all the previous recommendations and
19 the recommendations from any other subordinates? For
20 example, in one case you make the recommendation and
21 the file goes to the Director of Marine Regulations.
22 He makes a different recommendation and the file then
23 moves on to the Deputy Minister. Would the Deputy
24 Minister have only the recommendation of the Director
25 of Marine Regulations or would he have that
26 recommendation and yours also, as Director of Pilotage?

27 A. He would have all the recommendations
28 that had been written down and that is why I made this
29 suggestion, that we should get together and share our
30 experience and our opinions and that there would be only



1 one from nautical division as a result.

2 Q. So in practice, when the Deputy
3 Minister gets the file, he has the recommendation of all
4 those concerned?

5 A. He has everything.

6 Q. Everything?

7 A. He has the result of the report of the
8 preliminary inquiry and if it is available a transcript
9 of the evidence at any inquiry that has been made.

10 Q. And the recommendation of the nautical
11 division and marine regulations and what not?

12 A. That is correct.

13 THE CHAIRMAN: Anyway he may say "I cannot
14 agree with so and so. I agree with somebody further
15 down the file"?

16 THE WITNESS: This is correct.

17 CROSS-EXAMINATION BY MR. BRISSET:

18 Q. Captain, would you not agree with me
19 that there is an important distinction to be made
20 between the measure of removing a pilot's name from the
21 assignment list and the measure of suspending or
22 cancelling his licence? What I had in mind is that
23 the removal of the name of the pilot from the assignment
24 list would be purely a security measure whilst suspension
25 or cancellation of licence would be a disciplinary
26 measure which might also involve security.

27 A. I see your point very clearly, Mr.
28 Brisset and I don't think that there has been any
29 distinction made in this. If you remove a man's name
30 from the assignment list you are preventing him from



1 piloting and this is tantamount to suspending his
2 licence temporarily. There is no use -- if he has a
3 licence but he is not assigned, he is still under
4 suspension.

5 Q. Captain, let me illustrate what I have
6 in mind by considering the cases of pilots that are
7 on salary like in Port Weller-Sarnia district. If
8 such a pilot, say after an accident, is removed from
9 the assignment list his salary would continue to be
10 earned by him while if he is suspended or his licence
11 is cancelled then he would not get his salary.

12 A. This comes in under a different set
13 of laws and rules, Mr. Brisset. There is a procedure
14 laid down before you can tell a man he cannot work, you
15 are taking him off the list or you are withdrawing
16 him, you are suspending him temporarily.

17 Q.. However, in the case of a salaried
18 pilot the consequences are entirely different as
19 compared to the case of a pilot like those in the
20 districts of Quebec and Montreal?

21 A. Yes. The situation is quite different
22 because if, after due consideration, he is found not to
23 have been at fault, his salary just is paid to him.
24 It doesn't affect any of the other pilots but in the
25 other districts, that is not the case.

26 Q. So am I right in understanding from
27 your evidence that in the district in the St. Lawrence
28 River below Cornwall, the removal of the name of the
29 pilot from the assignment list is considered to be a
30 disciplinary measure.



1 A. Generally speaking, yes but that
2 removal of the name from the assignment list might be
3 also in the public interest.

4 Q. But primarily it is laid down by the
5 Department as purely a disciplinary measure?

6 A. Yes, for this reason. It is not
7 usually done until there has been a proper inquiry.

8 Q. Must I understand, from what you
9 said that the personal interest of the pilot must be
10 placed ahead of public security in these matters.

11 A. I think that the rights of the pilots
12 have to be placed -- have to be given precedence unless
13 it is obvious it is definitely a security risk.

14 THE CHAIRMAN: Is a licence a right or a
15 privilege?

16 THE WITNESS: This would depend upon where
17 you sat, my lord. We would like to think it is a
18 privilege.

19 MR. BRISSET, Q: However Captain, would you
20 not agree with me that removal from the assignment list
21 does not in any way attack the licence of the pilot
22 as such? He is still a licenced pilot with a valued
23 licence?

24 A. Yes, I cannot help but feel that until
25 his licence is suspended or taken away from him, he is
26 a licenced pilot.

27 DIRECT EXAMINATION BY MR. JACQUES:

28 Q. I suggest to you, captain, that ---

29 A. I have had pointed out to me that
30 section 333 refers to this, section 333 of the Canada



1 Shipping Act, sub-section 2 says that:

2 "Every pilot who has received
3 a licence from a duly constituted
4 authority on that behalf may retain
5 the same under and subject to the
6 provisions of this Part and shall,
7 for the purposes of this Part,
8 while so retaining the same, be a
9 pilot licenced by the Pilotage
10 Authority of the district to which
11 his licence extends."

12 Q. So it is a right. I would suggest that
13 the answer you gave to Maitre Brisset with respect to
14 suspension from the assignment list is not quite exact.
15 I shall read a section of the Quebec by-law, section 9,
16 sub-section 1.

17 "After deducting the amount
18 required for the Quebec Pilots'
19 Pension Fund, the superintendent
20 shall pay to each pilot the
21 remainder of the pilotage dues
22 earned by him."

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24 --

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1 In Quebec if you suspend a pilot from the
2 assignment list, he loses his earnings?

3 A. He doesn't earn any.

4 Q. He doesn't earn any? Well, the
5 situation would not be similar in some of the other
6 districts, say, for instance, in Saint John, New
7 Brunswick?

8 A. In effect it would be the same I
9 think, Mr. Jacques, because in the other districts,
10 where there is a pooling system ---

11 Q. If I may, I should quote from section
12 9, sub-section 4 and 5 of the Saint John District:

13 "As soon as practicable
14 after the end of any month
15 during which the services of a
16 pilot --"

17 I am sorry, this is sub-section 3:

18 "At the end of each month
19 the Supervisor shall determine
20 the net revenue of the District
21 for that month by deducting
22 from the amounts paid as pilotage
23 dues all amounts payable pursuant
24 to sub-section 2 and he shall
25 compute the shares of the pilots
26 in the net revenue of the District
27 on the basis of time worked by
28 each pilot during the month and
29 shall pay each pilot a sum equal
30 to his share."



1 Then sub-section 5 states the directives to
2 the supervisors with respect to computation of time
3 worked, and on the basis of those directives the
4 supervisor would have to give to the pilot who has been
5 suspended from the assignment list, whilst not having
6 his licence suspended, would have to give him a full
7 share because the only time he can deduct for the
8 purposes of calculating time worked is time when his
9 licence is suspended.

10 THE CHAIRMAN: I think a very good example
11 is in British Columbia. It is said in section 10:

12 "At the end of each month
13 the superintendent shall determine
14 the net revenue of the District",

15 and

16 "He shall compute the shares of
17 the pilots in the net revenue
18 of the district on the basis of
19 time worked".

20 Then section 11 states what is meant by "time worked".

21 "In determining time worked
22 by a pilot for the purpose of
23 section 10, the following rules
24 apply: any time spent on leave
25 without pay...."

26 There is no question of suspension.

27 MR. JACQUES: It is exactly, my lord, the
28 same as Saint John, New Brunswick.

29 THE WITNESS: But in sub-section (d) it
30 says:



1 "The time during which a
2 pilot's licence is suspended
3 shall not be included".

4 MR. JACQUES, Q: Yes, but if he is suspended
5 only from the assignment list, he still has a licence?

6 A. Yes.

7 Q. His licence is not suspended, therefore
8 you cannot deprive him of his share. You can only
9 deprive him of his share within the rules that you
10 have laid down -- not you personally, mind you -- the
11 Pilotage Authority.

12 A. I can only say we would not suspend
13 a pilot for so long without having an inquiry and having
14 a decision, and if there was a suspension it would
15 take effect from the time when he was taken off the
16 assignment list.

17 Q. That is another problem. Would you
18 check in your files whether there was a suspension
19 from the tour de role, from the assignment list, either
20 in B.C. or in Saint John, New Brunswick, because both
21 by-laws are similar in that respect. If you find
22 a suspension from the assignment list, will you check
23 and see whether the time the pilot was suspended from
24 the assignment list was deducted from time worked?
25 This is during the last five years.

26 A. We will try to find this.

27 CROSS-EXAMINATION BY MR. BRISSET:

28 Q. On this point raised by my friend here,
29 is it not a fact, captain, in the end result as far as
30 the dues are concerned, it really does not matter



1 because the Department will pay the dues not to the
2 pilot but to the Association, which will in turn turn
3 them over to the Corporation? So is not that in fact
4 a problem for the Corporation as to whether the pilot
5 whose name has been removed from the assignment list
6 should or should not get his share of the pool, and
7 that you should not be concerned with that?

8 A. This I think is right in the districts,
9 yes.

10 MR JACQUES:

10 Q. Further to my question, would you
11 check for the Quebec district? We know there are
12 suspensions from the assignment list in the Quebec
13 district, and would you give us the date of the
14 suspension from the assignment list, say for the past
15 five years?

16 THE CHAIRMAN: You asked for the past five
17 years? In Quebec it might be quite a task. In
18 British Columbia it might not be. I would say even
19 for one year in Quebec might be quite a task. Even
20 that. As long as we have good examples of what is
21 happening.

22 MR. JACQUES; Q: For 1963.

23 A. In the Quebec district, Mr. Jacques,
24 this does not apply because if he does not work under
25 the by-laws there are no dues to pass on to him or to
26 his Association.

27 Q. I realize that, captain, you are trying
28 to see behind my question. But I wish to tie the answer
29 that you will give me with other information already
30 available to the Commission and already filed.



1 A. I just want to make sure you appreciated
2 that.

3 Q. Oh, yes, I do.

4 A. We will try to get this information.

5 Q. For Quebec, 1963?

6 A. Very good.

7 MR. BRISSET, Q: Captain, you are aware, of
8 course, that the pilots do catch up on their turns when
9 they are absent for instance?

10 A. There are certain rules about this. I
11 haven't details, but normally they do catch up on turns
12 that they may have missed through sickness or other
13 absences, but the rules are different in different
14 districts.

15 MR. LALONDE: Isn't it a fact that rules
16 may vary from one district to another, and in certain
17 districts they may not catch up?

18 THE WITNESS: That is correct.

19 THE CHAIRMAN: In certain districts they
20 are not/^{on}turns, like Saint John and B.C., so it varies.
21 The whole system varies from one district to the other.

22 MR. JACQUES: Each district is different.

23 MR. LALONDE: In connection with the
24 question asked by my friend, this would apply to all
25 kinds of suspensions?

26 MR. JACQUES: Suspension from the tour de
27 role.

28 MR. LALONDE: But for whatever reason?

29 MR. JACQUES: Yes.

30 MR. LALONDE: In some districts, for instance,



1 if a man doesn't give any reason for his absence, or
2 something like that, he may be taken off the tour de
3 role for so many hours. He is penalized that way.

4 THE WITNESS: It becomes more and more
5 evident, my lord, that this cannot be squeezed within
6 the framework of the letter of the law.

7 MR. JACQUES: I don't know. I beg to
8 disagree on that.

9 THE CHAIRMAN: That is all right.

10 MR. JACQUES, Q: Question No.12 -- I think
11 within the framework of the law you have got proper
12 and solid grounds on which you can rest.

13 A. I would like to see you try to run
14 it, Mr. Jacques.

15 Q. No, thank you. Question No. 12, with
16 respect to groundings of vessels which are mentioned
17 therein. Would you let us know whether an inquiry
18 was held, the nature of same; if not held, why, and
19 recommendations or findings and disciplinary measures
20 taken as a result of the inquiry.

21 A. The first one named is the VIBEX?

22 Q. Yes?

23 A. In October, 1961.

24 Q. Yes.

25 A. A fact-finding inquiry carried out by
26 Captain Gendron found the pilot at fault.

27 Q. Yes.

28 A. A so-called show cause letter was sent
29 to the pilot informing him of the fact that he had been
30 found at fault, and inviting him to submit his defence.



1 After a request for a delay, which was
2 granted, a defence was forwarded by Mr. Langlois, by
3 pilot's counsel.

4 The result was a suspension for two months.
5 I may say that copies of all statements and I think
6 evidence on which the report was made were forwarded to
7 Mr. Langlois before he made his defence. Before the
8 defence was made.

9 Q. Upon a request on his part I presume?
10 He requested to be supplied with these documents.

11 A. Oh yes.

12 Q. Is this done as a matter a course,
13 the supplying of all the statements taken down on either
14 vessel?

15 A. It has been recently because of the
16 representations mainly of Mr. Langlois.

17 The next one is IRVING STREAM.

18 THE CHAIRMAN: Any questions on this case?

19 All right.

20 THE WITNESS: The next one is IRVING STREAM.
21 In November, 1962. After a fact-finding inquiry by
22 Captain Gendron, an inquiry under section 568 and 579
23 was conducted by Captain Seeley. As the result the
24 pilot was suspended for one month and demoted to grade
25 B for four months from grade A.

26 MR. BRISSET: The same pilot was involved
27 in these two casualties?

28 THE WITNESS: This was the case.

29 MR. JACQUES, Q: The next one?

30 A. The FORT ALBANY, in November, 1963.



1 Preliminary inquiry was held by Captain Morrison, the
2 result of which/^{it}was considered that the pilot was at
3 fault to some extent.

4 However, pilot's counsel, after sitting
5 through the proceedings, took exception to the fact that
6 Captain Morrison had omitted to inform the pilot before
7 starting his questioning that this was a preliminary
8 inquiry, so this one is still being argued about.

9 Q. I see. On that particular point?

10 A. On that particular point.

11 Q. Yes.

12 A. The next one is the LIONEL and the
13 MANCHESTER MERCHANT. It was a collision in December,
14 1963. The inquiry was held by Captain Atkins, the
15 result of which it was considered that the pilot of the
16 MANCHESTER MERCHANT had been at fault.

17 A show cause letter was sent on July 6th,
18 1964. July 22, at the request of Mr. Langlois, one
19 month delay was granted. We have not received any
20 defence yet.

21 Q. In order to be quite sure of your
22 answer, except in the case where you mention there
23 was a 568 or 579, the only other inquiries were under
24 555?

25 A. Yes, among these four incidents, yes.

26 Q. They were all 555 except one?

27 A. I would say so, yes.

28 Q. Can you answer question No. 13, why

29 was the office of Wreck Commissioner discontinued?

30 Explain his functions, his jurisdiction, etc. Under what



1 law was he appointed?

2 A. This was previous to the Canada Shipping
3 Act, 1934, but I have looked that up, and the same
4 provision was in chapter 27 -- 186. The same provisions
5 were in the previous Act which provides for the ---

6 Q. Would you have the reference to the
7 section? When you mention "previous act" you mention
8 the Act of 1934.

9 A. No, previous to 1934.

10 Q. Previous to 1934?

11 A. Chapter 186. The previous Canada
12 Shipping Act to the 1934 Act.

13 Q. Yes.

14 A. And the wording was I think exactly
15 the same.

16 Q. Would you have the section of that Act?

17 A. No, not at the moment. I can look it
18 up this afternoon or during lunch hour and tell you.

19 Q. If you would, please.

20 A. The wording, as I say, was the same I
21 think as the previous wording. The wording in the
22 present Act, section 558 of the present Act provides:

23 "The Minister may appoint
24 any officer of the Government of
25 Canada, or any judge of any court
26 of record, or any district judge
27 in admiralty of the Exchequer
28 Court of Canada, or any
29 stipendiary or police magistrate,
30 to be a commissioner to hold



1 formal investigations, or any
2 formal investigation ---"
3 and so on.

4 I have no personal knowledge of this, but I
5 believe that this would be entirely possible now, to
6 appoint a Commissioner to hold investigations.

7 Q. Do you know why he was called Wreck
8 Commissioner?

9 A. Yes. This is a term that was used
10 back historically.

11 Q. Yes.

12 A. This was the title that was given to
13 him then, and in fact I think that our documents or
14 appointments still refer to him as being a Wreck
15 Commissioner, or the Commission under oath of Wreck
16 Commissioner. I think our documents still have this
17 title.

18 Q. So the gentleman to which reference is
19 made in question 13 was more or less a permanent
20 formal investigator?

21 A. This is correct.

22 Q. No thought has been given to reviving
23 such a permanent office?

24 A. Very strongly. I have recommended it.
25 This is still under consideration.

26 Q. Is that in view of the several accidents
27 which require formal investigations lately?

28 A. No, but in view of the obvious
29 unsatisfactory nature of the present provisions or
30 arrangements which cause delay, and which mean that the



1 witnesses get away and action cannot be taken
2 expeditiously enough under the present circumstances.

3 We can take a case right now. This recent
4 collision.

5 Q. The LEECLIFFE HALL.

6 A. LEECLIFFE HALL collision. The
7 decision was made almost immediately to have a formal
8 investigation, but the Department of Justice has still
9 not named a judge for this purpose.

10 COMMISSIONER SMITH: Captain, in the
11 recommendation of your branch to reinstate the
12 Wreck Commissioner, would the recommendation contain
13 mainly what authority he had before, which I understand
14 was quite extensive?

15 THE WITNESS: Yes, Mr. Smith. I shouldn't
16 go into details on this, my lord, but my thought is
17 this is entirely feasible under the present provisions
18 of the Act. And if there were such a Wreck Commissioner,
19 we could use him in the same way as we found the
20 Hearing examiner was used in the States on our visit
21 to Washington.

22 MR. JACQUES, Q: When you say "under the
23 present set-up" -- I don't know whether you used the
24 expression "set-up" -- but anyway you said it was
25 unsatisfactory, and I believe you followed with one
26 good reason why it is unsatisfactory; delays which arise
27 in the nomination of a commissioner.

28 A. This is correct.

29 Q. Are there any other grounds for you to
30 find the present set up unsatisfactory?



1 A. Well, all the objections that have
2 been raised by counsel, protection of the pilots, matter
3 of the Bill of Rights, and so on. I believe that we
4 could arrange the procedure to be followed by the
5 Wreck Commissioner to take account of all these
6 protections for the individuals.

7 Q. There are procedures to be followed,
8 are there not?

9 A. Oh, yes, regulations for the holding
10 of inquiries.

11 Q. Shipping Casualty Rules and Shipping
12 Casualty Appeal Rules?

13 A. This is correct.

14 Q. Shipping Casualty Rules P.C. 1954-1861
15 and Shipping Casualty Appeal Rules, P.C. 1954-1860.

16 A. My thought was that these rules might
17 require to be revised a little.

18 Q. I beg your pardon?

19 A. My thought was that these rules might
20 require to be revised somewhat, but this can be done
21 by Order-in-Council.

22 Q. To the best of your knowledge these
23 rules are actually followed today?

24 A. Oh, yes, as closely as practical, yes.

25 THE CHAIRMAN: When you speak about the
26 question of delays, it is more than merely a question
27 of time limits. It is very important in investigating
28 marine casualties when witnesses are not going to be
29 there tomorrow, and any delay may render any
30 investigation absolutely useless.



1 THE WITNESS: This is correct, my lord. By
2 the very nature of the trade there is no room for
3 anything but immediate action.

4 MR. LANGLOIS: My lord, it is also a
5 fact that the pilot is suspended before the investigation
6 is held. There is another time factor there.

7 THE CHAIRMAN: I may say this is secondary
8 because there are other considerations to be taken
9 care of like paying compensation or things like that.
10 It could be well provided for, but in order to have
11 an investigation you have to have witnesses. If the
12 witnesses are gone, you have no investigation whatsoever.
13 It is fatal.

14 MR. JACQUES, Q: Apart from these two
15 grounds are there any others which would make the
16 present system unsatisfactory?

17 A. Well, these are legal objections that
18 have been raised by counsel for the pilots and by
19 others and we understand that these objections are made
20 under the Bill of Rights. We want to obviate these
21 objections and to provide any man who is under inquiry
22 with all the protection that he has a right to.

23 Q. I see, so so far there are two grounds;
24 one, undue delay because of the nature of the inquiry;
25 secondly, let us say -- I don't know how to call it --
26 legal objections raised by counsels.

27 A. As to procedure.

28 Q. As to proceedings. Are there any other
29 grounds to judge the present procedure unsatisfactory?
30 You have mentioned two. Are there any others?



1 A. I think this covers the general
2 "unsatisfactoriness."

3 MR. LANGLOIS: My lord, if I may point
4 this out, one of the legal objections that the Captain
5 has referred to is not necessarily procedure. In
6 some instances the Commissioner has failed to decide on
7 matters that were set before him to decide and the
8 government, after seeing this, attempted to take
9 disciplinary measures, while the Commissioner had not
10 seen fit to decide whether or not there had been
11 negligence.

12 THE CHAIRMAN: The Wreck Commissioner?

13 MR. LANGLOIS: Yes, the presiding judge
14 of the formal inquiry.

15 MR. JACQUES, Q: With respect to the
16 appointment of a permanent Wreck Commissioner, when was
17 it made?

18 A. Following a visit to Washington, we
19 looked very closely into this and I made a
20 recommendation, which was merely a basis again for the
21 lawyers to look at it. There has been no time for
22 them to look at it yet apparently.

23 Q. I would imagine though that even prior
24 to the visit to Washington you had the problems which
25 you have today -- that is, delay and legal objections;
26 is that correct?

27 A. Oh, yes; we had struggled with it.

28 Q. And had anyone prior to your
29 suggestion made any suggestion with respect to the
30 procedure?



1 A. Mr. McGillivray had set out a suggested
2 procedure but this is what is referred to by Captain
3 Gendron. I would prefer Mr. McGillivray to talk
4 about that.

5 Q. Question No. 3?

6 A. Question No. 3, and I would prefer Mr.
7 McGillivray to talk about that, if you don't mind. We
8 felt it was still far too cumbersome and unworkable.

9 Q. And do you foresee that your
10 suggestion of the permanent appointment would be
11 followed soon?

12 A. I do not know. I know that interest
13 has been expressed in it by those who have read it,
14 but it still requires the Law Branch's opinion on it.

15 THE CHAIRMAN: It is past one o'clock now
16 and I see that Mr. Brisset has quite a file on Wreck
17 Commissioners, so there may be quite a few questions
18 and I do not think we can finish in about half an hour
19 all the questions on this matter. I think it might be
20 as well to adjourn until 2:30 this afternoon as
21 usual.

22 ---Luncheon adjournment.

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1 ---Upon resuming at 2:30 p.m.

2 MR. JACQUES: Before we resume evidence I
3 should like to make a comment. Mr. Hamel, the former
4 superintendent of pilots in Quebec was on sick leave
5 from April 14th, 1961 to May 31st, 1961, on annual
6 leave from June 1st, 1961 to June 23rd, 1961 and
7 retiring leave from June 23 to December 23rd, 1961.

8 Now with respect to powers of attorney from
9 pilots for the district of Quebec I am advised that the
10 pilots' authorization to pay their earnings to the
11 association and/or corporation in Quebec are signed to
12 their association and no copies are in the hands of
13 the supervisor. I am also advised that the supervisor
14 in Quebec got in touch with the secretary of the
15 association and/or corporation and it was refused to
16 give copies of the powers of attorneys since it was
17 only one part of the whole agreement. When a new pilot
18 joins the association they show the district supervisor
19 the pilots' signature on the agreement and this
20 practice has been followed for years by the Department.

21 Now we resume the discussion ---

22 THE CHAIRMAN: On the Wreck Commissioner.
23 We were on the Wreck Commissioner question and we are
24 at Mr. Brisset, I think.

25 MR. JACQUES: I think we have finished the
26 question of the Wreck Commissioner, my lord.

27 CROSS-EXAMINATION BY MR. BRISSET:

28 Q. Captain, I understood from your
29 evidence this morning that you had made certain
30 recommendations involving the re-establishment of the



1 Wreck Commissioner's court; is that correct?

2 A. I said I had sent out a recommendation
3 setting out this as a possibility but it was not yet
4 studied by the legal branch.

5 Q. Under the recommendations which you
6 made did you contemplate that the Wreck Commissioner's
7 court would operate in the same manner as it did
8 operate when it was in existence, I believe in the
9 twenties up until 1930, when Captain Demers died?

10 A. I am not aware of how it was handled
11 then, Mr. Brisset. No, I thought that this procedure
12 could be followed under the present Act with perhaps
13 a slight amendment to the present regulations.

14 Q. Are you aware that the Wreck Commissioner's
15 court which functioned in the twenties was a court of
16 public inquiry at which the parties involved in the
17 investigation could be represented by counsel?

18 A. I am not sure how it was done then but
19 now definitely it would be.

20 Q. It would be? Would that mean that
21 during the course of the inquiry, during the course of
22 the hearings before the commissioner, the witnesses on
23 both sides, in the case of a collision for instance,
24 would be examined and their respective counsel present?

25 A. In the formal investigation?

26 Q. Yes.

27 A. Yes, as I envisaged it, it would be
28 the same as a formal investigation, the same procedure
29 as is held now, only with a permanent appointee instead
30 of an ad hoc.



1 MR. MCGILLIVRAY: It would be subject to
2 the same rules.

3 THE WITNESS: This is my thought.

4 MR. BRISSET, Q: In the case of the
5 investigations now carried out by a person appointed by
6 the Minister of Transport, only one side is heard at a
7 time; is that correct?

8 A. In the inquiries?

9 Q. Yes?

10 A. Yes. However there is a distinction
11 here between a formal investigation and a preliminary
12 inquiry. We have only one side heard at a time, yes.

13 Q. And that would be changed under the
14 proposed re-establishment of what we call the Wreck
15 Commissioner's court?

16 A. Oh, yes, this would be the formal
17 investigation.

18 Q. Is it contemplated that -- as I am
19 instructed was the case for the old Wreck Commissioner's
20 court -- this court or the officer appointed to act
21 as Commissioner would be under the jurisdiction of the
22 Minister of Transport?

23 A. I assume so. I am not sure about this.
24 I would not know the exact status of him.

25 MR. MCGILLIVRAY: Surely he would be
26 operating under the provisions of the Shipping Act which
27 gives the Minister of Transport no authority over a
28 Commissioner appointed to hold formal investigations?

29 THE WITNESS: Yes. As I envisage it he
30 would have the same powers or the same status as a



1 judge who is now appointed for a formal investigation.

2 MR. BRISSET, Q: But I understand that there
3 would be a permanent officer or a permanent appointee?

4 A. This is so.

5 Q. As such would he come under the
6 jurisdiction of the Minister of Transport; is that
7 contemplated?

8 A. He would be a member of the civil
9 service, yes, I imagine so.

10 MR. MCGILLIVRAY: Surely he would fall
11 within the wording in the first and second lines of
12 Section 558 -- "An officer of the Government of
13 Canada" -- and as such he would possibly have to come
14 under some minister and the Minister of Transport would
15 be the logical minister to place him under.

16 MR. BRISSET, Q: The reason I am raising
17 this point, Captain Slocombe, is that in the years
18 during which Captain Demers was officiating as Wreck
19 Commissioner there were rather strong criticisms
20 directed against him -- not personally but in his
21 official function, because he was an appointee of the
22 Minister of Transport and was coming under his
23 jurisdiction. Are you aware of these criticisms?

24 A. No, I am not, Mr. Brisset.

25 Q. These criticisms were particularly
26 directed in the light of cases where the Pilotage
27 Authority or the Department of Transport might be,
28 if I may call it that way, a party interested -- for
29 instance if the Pilotage Authority as such was a party,
30 in the sense that criticism might be directed against



1 the Minister of Transport as Pilotage Authority in view
2 of his handling of a particular pilot's case.

3 A. Maybe this is a weakness in my
4 proposal that Mr. McGillivray has already thought of.

5 MR. MCGILLIVRAY: I think it might be
6 mentioned that consideration has sometimes been given
7 and certainly is being given in connection with this
8 whole problem to the question of whether in certain
9 instances the counsel who is described in the Shipping
10 Casualty Rules as counsel for the Minister of Transport
11 might not be described rather as counsel for the
12 Wreck Commissioner, with the possibility in mind that
13 there would also be counsel for the Department of
14 Transport who would look out for the Department's
15 interests to the extent that it might be called in as
16 a party, as the provider of aids to navigation, as the
17 operator of canals or the ship channel, etc.

18 MR. JACQUES: With respect to the use of
19 the word "party" I would draw the attention of the
20 Commission to Section 8 of the Shipping Casualty Rules
21 where parties are defined as follows:

22 "The Minister and any person
23 upon whom the notice of investigation
24 has been served shall be a party
25 to the proceeding. A person may
26 by leave of the court enter an
27 appearance and any person who
28 enters an appearance under this
29 section shall thereupon become
30 a party to the proceedings."



1 It would seem therefore that in each aspect
2 of the investigation, formal investigation, the Minister
3 is a party.

4 MR. MCGILLIVRAY: This is the rule, as
5 I say, in connection with the proposed revision of
6 these rules that would be tied in with the question of
7 the appointment of a Wreck Commissioner and we have
8 considered whether that rule should not be changed so
9 as not always to make the Minister a party, but only
10 when he elects to apply for it.

11 MR. BRISSET, Q: To give it more precise
12 illustration, Captain, are you aware that some
13 criticism was directed against the Minister of Transport
14 in the formal inquiry into the disaster of the
15 TRITONICA and the ROONA HEAD, at the time when
16 information was sought on the record on one of the pilots
17 involved in this collision, particularly his medical
18 record, as rumours were flying at the time that he had
19 had a stroke and had died even before the collision?

20 A. I was not aware of this.

21 Q. Are you aware at least that it was not
22 possible to bring before the court of inquiry into the
23 TRITONICA any information of use such as we obtained
24 here on the record of one of the pilots?

25 A. No, I was not aware of this.

26 MR. BRISSET: Because the Department of
27 Transport counsel objected for the Department of
28 Transport or the Pilotage Authority. I do not know
29 which hat he was wearing at the time.

30 My lord, the Shipping Federation of Canada



1 has been able to find in its old records press releases
2 and correspondence that dealt with the Wreck
3 Commissioner's court and its decisions in the years
4 between 1925 and 1928 and I would like to leave this
5 file perhaps with counsel for the Commission or the
6 Secretary and should anything of interest to the
7 Commission be found in this file I am quite willing to
8 have it deposited with the Commission formally.

9 THE CHAIRMAN: Thank you very much.

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1 MR. BRISSET: For the moment I would like,
2 in view of the questions I have posed, to refer
3 particularly to an article which appeared in the Montreal
4 Start on December 11, 1928 reporting an interview with
5 a representative of the Canadian Board of Underwriters,
6 I think Mr. Dale. I would like to quote part of this
7 press release. The heading is "Wreck Inquiry's
8 Judicial Function".

9 "That the system of conducting
10 marine inquiries in Canada under
11 the supervision of the Minister
12 of Marine and Fisheries is wrong
13 and that the underwriters here
14 would be willing to cooperate
15 with shipping interests in asking
16 the government to place the
17 Wreck Commissioner under the
18 courts, was part of a statement
19 made by Robert Dale, head of the
20 underwriting firm of that name,
21 to the Star today, when discussing
22 the resumed attack against the
23 system by Old Country Shipping
24 Papers and organizations.

25 'I agree entirely with the
26 recent statements to the effect
27 that the Wreck Commission ought
28 to be an entirely different body
29 to the Department of Marine and
30 Fisheries.' said Mr. Dale."



1 Further on there is a reference to the
2 Imperial Merchant Service Guild and here is the
3 quotation.

4 "Mr. Dale pointed out that
5 some of the judgments in the
6 Wreck Court which he considered
7 had not been quite satisfactory,
8 especially those referred to in
9 recent articles in 'Syren and
10 Shipping' and 'Fair Play' two
11 of the leading shipping
12 publications in Britain.

13 These journals have taken
14 up the cudgels on behalf of the
15 Imperial Merchant Service Guild,
16 and in an article ten days ago
17 stated that according to the
18 wording of some of the
19 judgments granted by the
20 Dominion Wreck Commissioner,
21 it appears that he is fully
22 cognizant of the seriousness
23 of some of the accidents that
24 occur, but that he lets the
25 pilots down too easy.

26 Mr. Dale also said that the
27 cases quoted by the former
28 publication are good examples
29 of the way in which the inquiries
30 are conducted, and also said that



1 Captain Demers, Dominion Wreck
2 Commissioner, could not work
3 properly because he was tied up
4 by the Department, the Minister
5 of Marine and Fisheries being
6 able to quash any judgment that
7 he rendered."

8 I might add ---

9 MR. LALONDE: If the question is coming, I
10 will not object.

11 MR. BRISSET: I might add, my lord, that
12 my senior associate, who has now retired, had a lot to
13 do before the Wreck Commissioner and always had a high
14 respect for him and I think that in other cases that did
15 not possibly involve the Minister of Marine and
16 Fisheries, his judgment or his decisions I think had
17 quite a salutary effect. That is the information I
18 have been given.

19 THE WITNESS: I may say, my lord, that I
20 was sailing on the Lakes in 1930 and I heard about the
21 Dominion Wreck Commissioner. He was the terror of the
22 people on the Lakes.

23 MR. BRISSET: I must say that this was before
24 my time. I could not give any personal opinion.

25 THE CHAIRMAN: May we keep your clippings
26 for a time?

27 MR. BRISSET: Yes, my lord.

28 THE CHAIRMAN: We will return them to you.

29 MR. JACQUES: My lord, since we have Mr.
30 Macgillivray with us this afternoon ---



1 THE CHAIRMAN: Before we proceed to that,
2 is there anything else on the Wreck Commissioner's
3 question?

4 THE SECRETARY: My lord, not on the Wreck
5 Commissioner but as a result of the evidence yesterday,
6 the Department of Transport through Captain Slocombe,
7 I believe has found copies of the letters that the
8 Department of Transport wrote to the American Shipping
9 Companies with respect to the alleged use of unlicensed
10 pilots in between Montreal and Cornwall.

11 Now, if you will recall, my lord, there was
12 mention yesterday about companies, the plural. I find
13 that apparently there is only one company involved
14 which is the Pittsburgh Steamship, Division of U.S.
15 Steel Corporation. There are two letters written by
16 the Minister.

17 THE CHAIRMAN: You will let Captain Slocombe
18 file these documents and maybe counsel would like to
19 ask some questions on them.

20 THE SECRETARY: May I give it a number now?

21 THE CHAIRMAN: Yes.

22 THE SECRETARY: It will be Exhibit 1349,
23 letters of October 9th and October 23rd, 1963 with
24 replies in both cases October 15th and November 8th,
25 1963 from the company.

26 ---EXHIBIT NO. 1349: Letters of October 9th and
27 October 23rd, 1963 with replies
28 in both cases of October 15th
29 and November 8th, 1963 from
30 the company.

THE CHAIRMAN: Will Mr. Lalonde wish to see



1 these records now?

2 MR. LALONDE: Yes, my lord.

3 Q. Did your Department believe the
4 explanation given by the steel industry?

5 A. We could not give the lie unfortunately.

6 MR. LALONDE: That is all.

7 THE CHAIRMAN: Any further questions on the
8 subject?

9 MR. JACQUES: My lord, due to the fact that
10 Mr. McGillivray is with us this afternoon I would
11 suggest that it may be better if we departed from the
12 strict order of the questions and if we started an
13 inquiry into a disciplinary matter and then an inquiry
14 into casualties and Mr. McGillivray could outline each
15 step as it is taken. I am sure that most of the
16 questions would have been answered and it might make
17 better reading material afterwards.

18 MR. R. MACGILLIVRAY, (examined)

19 DIRECT-EXAMINATION BY MR. JACQUES:

20 MR. JACQUES, Q: Now, Mr. Macgillivray,
21 let us deal first with a case of discipline. What steps
22 would be taken if a pilot is either on board a ship or
23 about to board a ship and we are advised that quite some
24 time ago he was taken off your roll.

25 MR. MCGILLIVRAY: Well, of course, there may
26 be various reasons for discipline being contemplated.
27 Normally if it is a matter of the pilot or the
28 allegation he is under the influence of drink, this
29 information normally comes to the Department something
30 in the nature of three to four weeks after the event



1 when a ship's agent will send the Department a copy of
2 a letter from the master.

3 Usually it is just a letter in which he
4 says: "The pilot came aboard drunk", and frequently
5 it is no more than that bald statement, that the
6 pilot came aboard drunk. Sometimes it is a little more
7 than that. Sometimes it is an affidavit and sometimes
8 it goes into some detail, alleging that the pilot was
9 slurring in his speech and staggering and glassy eyed,
10 flush of face.

11 Perhaps there is supporting statements from
12 one or more of the other officers but when this
13 information comes to the Department whether it is in
14 detailed fashion or even if it is by a phone call from
15 the agent some hours after the event it is practically
16 never possible for the Department to do a type of
17 investigation that make this possible to adduce
18 evidence that would be satisfactory to a court to
19 convict a pilot of such an offence.

20 Upon very rare occasions we are able to ob-
21 tain the presence of someone from the ship or someone
22 from the ship's agent but this is a most rare occurrence
23 and I think there is a certain reluctance on the part
24 of agents and masters to get a pilot into trouble.

25 We have had occasions when, for instance,
26 the master has reported a pilot drunk and the
27 representative of the agent went aboard the ship and
28 actually accompanied the pilot to shore. While we had
29 a positive statement from the master who at this time
30 was in Hamburg, that the pilot was drunk, the agent



1 refused to state that he was.

2 Now, this is the sort of case in which we
3 are under criticism from the Shipping Federation for not
4 having proceeded to deal with these allegations but we
5 find it impossible to deal with it in conformity with
6 the Bill of Rights and give the man a fair hearing.

7 We have to bring the evidence out and the
8 fact is that in that particular case I have just mentioned
9 we decided there was no point in going ahead with the
10 hearing when the only evidence against the pilot was
11 documentary and the person who had seen him refused to
12 be quoted so we didn't go ahead.

13 THE CHAIRMAN: So the Department or the
14 authority has the responsibility of bringing out the
15 case and I am wondering whether it would not be better
16 if the authority should be given to the Shipping
17 Federation to press the case themselves.

18 MR. MCGILLIVRAY: In my view, the Shipping
19 Federation can undertake private prosecution in the
20 courts of the province.

21 THE CHAIRMAN: Because it is a breach of the
22 by-law and a breach of the law and therefore they could
23 be prosecuted before the Magistrate's Court in Quebec,
24 for instance?

25 MR. MCGILLIVRAY: Yes, I believe this is
26 so. This is my opinion on the application of the
27 provisions of the latter part of the Act.

28 The other type of case that has been dealt
29 with is, of course, where a pilot is alleged to have been
30 remiss in his duties by allowing a ship to get into a



1 a collision or to go aground, through his negligence or
2 through failure to use due diligence in the conduct of
3 the vessel.

4 Investigations of these things -- the
5 original investigation is carried out by the local
6 supervisor to the extent that he is capable. He at
7 least starts to get the information as to the names of
8 the ships, the time the pilot was aboard, when he went
9 on board, the names of the officers, whether the ship
10 is going to be available so that they can be interviewed
11 and then the practice is for our investigations officer
12 to proceed as soon as he can to the scene; if it is one
13 that appears to warrant his intervention to conduct
14 an investigation.

15 MR. JACQUES, Q: Excuse me. Under what
16 authority would the supervisor act then?

17 A. He has no statutory authority. He is
18 simply an employee of the Pilotage Authority, asking
19 questions on behalf of the Pilotage Authority. He has
20 the power under the by-law to compel a pilot to appear
21 before him. He has no other powers of compelling the
22 attendance of witnesses.

23 Similarly, the investigations officer from
24 here in Ottawa has no more power than the local
25 supervisor unless he is appointed to do a preliminary
26 inquiry under section 555.

27 THE CHAIRMAN: He has to be specially
28 appointed for that. There has to be an accompanying
29 order.

30 MR. MCGILLIVRAY: There has to be an order



1 an ad hoc order directing him to conduct a preliminary
2 inquiry into that case.

3 THE CHAIRMAN: But the two other cases you
4 mentioned before he would just have the power to convene
5 the pilot before him and if he contacted other people
6 he could not compel them to answer. He could not put
7 them under oath either.

8 MR. MCGILLIVRAY: That is correct and so
9 the tendency has been, firstly, if there is no
10 casualty he cannot conduct a preliminary inquiry and I
11 believe it is respecting shipping casualties that he
12 may conduct a preliminary inquiry so, if there has been
13 no collision or grounding, he cannot. He can simply
14 act as the representative of the Pilotage Authority,
15 trying to find out facts for the Pilotage Authority.

16 MR. JACQUES: Q: And casualties are defined
17 in section 551 of the Act?

18 A. Yes.

19 Q. Those are cases where a preliminary
20 inquiry may be held.

21 A. Yes, pursuant to subsection 1, section
22 15.

23 Q. And the local supervisor, when you say
24 he has the power to compel the attendance of pilots
25 before him in his office, would be acting under the
26 by-laws and as a typical example you may refer to
27 section 19 of subsection 3 of the Saint John, New
28 Brunswick by-laws.

29 A. Yes. That is the one. There is also
30 a general provision that a supervisor -- section 3,



1 subsection 1, paragraph (c) of the same by-law, the
2 supervisor has the direction of the pilots. He may
3 order them to appear before him.

4 Q. With respect to section 19(3), this is
5 a special type of attendance?

6 A. Yes.

7 Q. Under what sections of the law would
8 these powers be rendered to the supervisor?

9 A. Well, I presume the Pilotage Authority
10 in making that by-law, that section of the by-law,
11 required no more authority than he required for the
12 making of section 3 of the by-law.

13 Section 329, paragraph (f) does provide that
14 they may make regulations for the governing of pilots,
15 etc., and for the holding of inquiries either before
16 the Pilotage Authority or any other person.

17 I should think there is ample authority in
18 the Act for that by-law.

19 A preliminary inquiry, of course, is not
20 restricted to use in matters dealing only with the
21 conduct of pilots. Generally speaking in the
22 Department it is looked on as not a hearing but rather
23 an investigation for the purpose of determining whether
24 further investigation by means of a formal inquiry,
25 formal hearing is required.

26 Q.. That is 555?

27 A. Yes.

28 Q. The article says the Minister may
29 appoint a chief officer of custom or any officer of the
30 Government of Canada or any other person. Would there



1 be in the Pilotage Division persons whose duties are to
2 hold these preliminary inquiries?

3 A. No, the practice has been to select
4 a competent officer of the Department. Sometimes they
5 are from the Pilotage Division, and sometimes they are
6 from the other division in Captain Slocombe's
7 bailiwick, the Nautical Division.

8 I think that their chief qualification is
9 that they be Master Mariners, and the practice in the
10 Department has been to appoint some Master Mariner
11 for that task.

12 Q. There has been no established practice
13 whereby the same gentleman is appointed all the time?

14 A. No, except that now that an Investigations
15 Officer has been appointed there is a tendency when he
16 is available to have him appointed for this purpose.

17 Q. I see.

18 A. His duties as Investigations Officer
19 are not restricted to pilotage, as I understand it,
20 but he can be assigned to any investigation that he
21 is competent to undertake.

22 Q. Each time the Minister makes an
23 appointment, gives an order to hold a preliminary
24 inquiry?

25 A. This is the effect of 556, yes.

26 Q. But in each case it in fact is done?

27 A. I am not too certain about that now
28 that the Investigations Officer has been appointed and
29 given the task of making preliminary inquiries
30 respecting shipping hazards. This is one of his terms



1 of reference. That appointment having been made under
2 section 555, I think it is not considered necessary
3 for the Minister to direct him each time he conducts a
4 preliminary inquiry.

5 He may go on without special direction under
6 section 556 and conduct a preliminary inquiry. This is
7 a different situation from what occurs when a permanent
8 Wreck Commissioner is appointed under section 558.

9 Q. I see.

10 A. If he is appointed he must, still under
11 560, be authorized ^{each} /time that a formal investigation is
12 to be held.

13 Q. Now, with respect to the Investigating
14 Officer, might we have a copy of his appointment as
15 Investigating Officer?

16 A. Have this next week?

17 Q. Yes, that is ample time. Now, when
18 you hold an inquiry, either the informal one which is
19 held by the local supervisor do you consider that the
20 pilot involved is, to use a very harsh word, ~~perhaps~~
21 too harsh, ~~a~~ compellable witness?

22 A. This is a point on which I must
23 confess I have some reservations. I think it was
24 established in our system of justice long before the
25 Bill of Rights that a person is not compelled to give
26 evidence against himself.

27 Q. When he is charged with an offence.

28 A. Not compellable against himself. That
29 is right, yes.

30 Q. At the stage of the inquiry he is



1 not charged with anything?

2 A. That is correct, and I think he is then
3 a compellable witness, yes, but what he says may not
4 be used in later proceedings.

5 Q. Oh, yes, it can. Save in criminal
6 proceedings.

7 A. Well, I mean in later proceedings
8 which might bring his licence into jeopardy.

9 Q. The Canada Evidence Act, section 5,
10 with respect to the problem we are discussing, reads
11 in part as follows: the answer so given -- that is
12 given when a witness is a compellable witness -- shall
13 not be used or receivable in evidence against him in
14 any criminal trial or other criminal proceedings against
15 himself thereafter taking place other than a prosecution
16 for perjury in the giving of such evidence. This
17 might perhaps mean that after giving evidence at the
18 preliminary inquiry, and under section 555 or the
19 informal preliminary inquiry held by the supervisor
20 or the investigating officer, he is later on charged
21 with an offence which is not a criminal offence, and
22 then his answer would be receivable in other words.

23 A. Well, I don't have my Bill of Rights
24 with me. I certainly would be inclined to the belief
25 that under the Bill of Rights this could not be. I mean,
26 it seems to me that ---

27 THE CHAIRMAN: All that depending on whether
28 we must withdraw the licence or if it is a security
29 measure.

30 MR. MACGILLIVRAY: Yes. I must say in this



1 context I am talking about it entirely as a matter of
2 punishment. I feel that withdrawal of his licence
3 when it is considered that he is unfit, is a different
4 matter.

5 I don't know the cases on the section of
6 the Evidence Act which you refer to and whether
7 criminal proceedings is given a narrow or broad
8 construction, but where a pilot is required to appear
9 on some sort of hearing, whether it be a formal
10 inquiry or some other type of inquiry set up by the
11 Minister, if he is required to appear there and if his
12 licence is in jeopardy as a matter of punishment, I
13 think the courts would be inclined to interpret this
14 section broadly enough to say that these are quasi
15 criminal proceedings.

16 THE CHAIRMAN: That is the situation now.
17 Of course, in future the situation can be taken care
18 of, and we have an example of that in military law where
19 in the Armed Forces we have a system of fact finding
20 bodies where all the witnesses involved are
21 compellable witnesses, and of course the evidence of the
22 court of inquiry cannot be taken against them, not only
23 in criminal matters, but also penal matters under
24 military law.

25 Up to the last war we had the privilege of
26 silence under the old British Army Act, and this was
27 changed with the new British Army Regulations.

28 MR. MACGILLIVRAY: It is perhaps my
29 experience under King's Regulations that led me to
30 adopt this attitude in connection with pilots, sir.



1 I forget at what point I reached and what
2 further you wanted.

3 MR. JACQUES, Q: We were investigating
4 a pilot with a view to withdrawing his licence or
5 suspending his licence by way of punishment.

6 A. Yes. If after an investigation the
7 person who did the investigation, whether it is the
8 Investigating Officer acting under the Act as a
9 preliminary inquiry or whether it is the Investigations
10 Officer not acting as a preliminary inquiry but merely
11 investigating for the Pilotage Authority, or whether
12 it is the local officer of the Authority doing an
13 investigation, if a review of the report of his
14 investigation indicates that there is a strong
15 possibility that the pilot has violated the by-laws,
16 then provision has to be made for some sort of hearing
17 for the pilot.

18 This also, I think, is something that was
19 recognized in the Department before the passage of
20 the Bill of Rights, that provision has to be made for
21 the pilot to know what is alleged against him, and to
22 adduce evidence against him -- in opposition.

23 Q. Before you proceed any further, let
24 us take the case of a violation of a by-law.

25 A. Yes.

26 Q. Before which tribunal or court would
27 you proceed?

28 A. I am not quite sure what you mean.
29 Do you mean a formal investigation?

30 Q. No. In other words, who would render



1 judgment?

2 A. This is what I was just leading into.

3 Q. I am sorry.

4 A. I think we recognize that there are
5 several ways of handling these things, and they must
6 depend on the degree of importance of the case.

7 Q. Yes.

8 A. If a man is late reporting to his desk
9 or reporting on turn, and perhaps he has received
10 several warnings to this, it is time that he be
11 punished slightly, and there is no need really of a
12 large scale very formalized investigation of the
13 matter.

14 Q. I am not talking about investigation
15 now.

16 A. No, no, I mean a large scale hearing,
17 a hearing in a very formal manner. So during the semi-
18 distant past -- I should say fifteen years ago and
19 perhaps up to about ten years ago -- it was quite
20 normal for the local superintendent or supervisor,
21 whichever he was called in those days, to have the
22 man up on the mat and tell him he was fined \$50.00, and
23 that was the end of it. My recollection is that
24 Captain Slocombe felt this system worked very well.

25 THE CHAIRMAN: No charge sheet or anything?

26 MR. MACGILLIVRAY: No, sir, no charge
27 sheet. It was quite informal. However, when people
28 began taking more interest in civil liberties and the
29 rights of the person, counsel, etc., it was recognized
30 that there must be some provision to give the pilot



1 an opportunity to defend himself.

2 We thought for the most minor offences the
3 local superintendent should notify the pilot by letter
4 telling him the nature of the complaint against him and
5 the provision of the by-law that he is alleged to
6 have violated, and a statement that from the information
7 he, the superintendent, has, he is contemplating the
8 imposition of a penalty.

9 MR. JACQUES, Q: Is this what is known
10 as a show-cause letter?

11 A. Yes, this is it, yes. Then stating
12 the pilot might appear before him at a specified time
13 and place in order to hear what evidence there is
14 against him, and in order to make any statement or adduce
15 evidence of his own. This is one type of show-cause
16 letter. I could deal further with another later.

17 Q. While we are talking about this show-
18 cause letter, would the witness supply us with an
19 example of that?

20 A. I don't know. This is something that
21 would have been done out in the regions. I am not
22 sure whether -- this was in a procedure that was
23 suggested a few years back. I am not positive that
24 it has been followed in that way. They might do this
25 verbally, but the instruction was that the pilot was
26 to know what by-law he was alleged to have violated;
27 what action it was that it was alleged was a violation,
28 and what information was in the hands of the superintendent
29 that bore on the matter. The pilot would then be
30 allowed to come forward and make a statement or adduce



1 further evidence.

2 Now, realize that the evidence against the
3 pilot might be nothing other than a letter or this
4 sort of thing. We said nothing about the rules of
5 procedure or the rules of evidence. We made provision
6 in this if the pilot should appear and admit that he
7 had violated the by-laws he could then make a statement
8 in mitigation. If he admitted the truth of the
9 allegation but denied that this was a violation of the
10 by-laws, he would be permitted to present argument on
11 the legal question as well as a statement in
12 mitigation. If he denied the truth of the allegation,
13 he would be allowed to bring evidence.

14 Q. Now then, the local supervisor,
15 according to what you have just said, must have been
16 clothed with some authority to pass on judgment and
17 award punishment.

18 A. For instance section 16 of the Montreal
19 by-laws. I am afraid I should not have quoted the
20 Montreal by-laws because this is one that was amended,
21 that a pilot or an apprentice has to be found by the
22 Authority to have violated a by-law. Under the older
23 provision, it is provided in section 2 of section 16 that
24 where a breach of the by-law is alleged to have been
25 committed, the pilot or apprentice accused of
26 committing the breach shall be permitted to present
27 his defence, either personally before the Supervisor or
28 in writing to the Authority.

29 Q. Yes, but this does not clothe the
30 supervisor with any authority to award a punishment.



1 THE CHAIRMAN: What you are referring to
2 is a case where the supervisor or superintendent is
3 given authority under the by-law to impose a fine
4 up to a certain amount?

5 MR. MACGILLIVRAY: Yes. This is the
6 section that is now missing from the Montreal by-law.

7 CAPT. SLOCOMBE: It is back in again, Mr.
8 Macgillivray. It has just been put back in.

9 MR. MACGILLIVRAY: But it does appear in a
10 number of by-laws.

11 MR. JACQUES, Q: The Quebec by-law refers
12 also to the Authority and not the local supervisor.

13 A. I am sidcussing now only the place
14 where the supervisor does have the authority to assess
15 punishment. I shouldn't say "only", but only those
16 by-laws where it is provided that a pilot may make
17 his defence before the supervisor. It could very well
18 be that they would go through this drill. The pilot
19 would make his defence before the supervisor who would
20 then communicate the whole thing to the Authority with
21 his recommendation as to whether punishment is provided.

22

23 --

24

25

26 --

27

28

29

30 --



1 THE CHAIRMAN: If he feels that his powers
2 of punishment are not satisfactory. As in the case of
3 the army or the armed forces where he feels his
4 disciplinary powers are not enough, he would recommend
5 a court martial to a higher authority.

6 MR. JACQUES, Q: But not with the section
7 that you have just read. In the section you have just
8 read only the Pilotage Authority may award punishment.

9 A. Yes.

10 Q. It must have been another by-law
11 which is now repealed that provided that the
12 supervisor could award punishment of, I believe, up to
13 \$40.00. It is still Section 21 of the Quebec
14 by-laws.

15 A. Penalty of \$40.00 under Section 21.

16 Q. This is the superintendent. Under
17 what section of the law would the superintendent
18 derive his authority?

19 A. To impose this?

20 Q. Yes.

21 A. Under this section of the by-laws.

22 Q. Yes, but under what section of the law
23 is the superintendent empowered to do so?

24 A. Section 329.

25 THE CHAIRMAN: (b).

26 THE WITNESS: Well, first paragraph (g)
27 mentions rules for the breach of any regulations made
28 pursuant to this section and then (p) -- delegate to
29 any person either generally or with reference to any
30 particular matter any of the powers ---



1 MR. JACQUES, Q: This is rather peculiar
2 wording, is it not, for sub-section (p)?

3 A. Yes, it is. It has been there for a
4 very long time.

5 Q. It must have been added afterwards
6 because if you read the opening paragraph ---

7 A. I have read it many times -- the
8 Authority may authorize the Pilotage Authority. Of
9 course, the Pilotage Authority in doing so, it is
10 with the consent of the Governor-in-Council.

11 THE CHAIRMAN: Yes, I think that is it.
12 It is the Governor-in-Council approving the request of
13 the Pilotage Authority to ---

14 MR. MACGILLIVRAY: Give himself this power.

15 THE CHAIRMAN: --- to allow the Pilotage
16 Authority later on to delegate this power without
17 referring to the Governor-in-Council again. This is
18 under Section 327 paragraph 2.

19 MR. JACQUES, Q: I was just going to ask
20 what is the difference between 329(p) and 327(2)?

21 A. Well, having found my authority in
22 Section 329 I would not bother going further.

23 Q. But you do not know why 329(p) was
24 adopted if 327 existed?

25 A. No, I have not gone into the history
26 of this. I think we recognize that the idea of this
27 goes back to rather ancient times and the wording is
28 not the sort of wording you would draft today.

29 Q. Thank you. We are dealing with the
30 first half of the "show-cause" letter outlining the



1 procedure and outlining the fact that the pilot could
2 raise points of law and deny his guilt or admit his
3 guilt or plead mitigation of punishment. But in the
4 "show-cause" letter ---

5 THE CHAIRMAN: Excuse me, I am still thinking
6 about the delegation of power. I do not think it would
7 be under (p) because (p) is for the Authority to
8 delegate part of its power without order-in-council;
9 so this is not what it is. When the by-law is
10 approved it is a delegation with order-in-council.

11 MR. MACGILLIVRAY: Yes.

12 THE CHAIRMAN: So really it comes under
13 327, although it is included in the by-law, because
14 under 329(p) this would be a blanket authority to give
15 power without order-in-council and without by-law.
16 (p) should be the power to delegate; but (p) should be
17 in the by-law.

18 MR. MACGILLIVRAY: Yes. Well, I think
19 that is correct, and in the by-law the superintendent
20 is delegated with the power to ---

21 THE CHAIRMAN: In the by-law it provides
22 the delegation and not the power to delegate, not a
23 blanket power to delegate. Only (p) is for the
24 blanket power to delegate. I don't know; it looks
25 to me this way at first blush.

26 MR. JACQUES, Q: Could the pilot request
27 to cross-examine the witnesses who have given evidence
28 to the supervisor prior to the writing of the "show-cause"
29 letter?

30 A. Well, I should point out that these



1 were suggestions made to the local superintendent as
2 to how they think they might deal with this matter of
3 sending the letter. When you have heard mention of
4 "show-cause" letters here they were talking, I am
5 sure, about a different situation. There would be
6 no reason for the superintendent to write the letter if
7 the man is sitting in his office and they can talk it
8 over together and the man admits his guilt and is
9 not going to fight a \$50.00 fine. This is all right;
10 he can go ahead.

11 But one of the instructions that was made
12 to the superintendent was that if the pilot or his
13 council requests that any of the witnesses who gave
14 written statements be called to testify verbally the
15 regional superintendent shall, if practicable, accede
16 to that request.

17 Q. Then if it was not practicable ---

18 A. If the witnesses are in Hamburg it
19 is not practicable.

20 Q. Of course.

21 A. And he would have to allow a reasonable
22 adjournment for the purpose of calling witnesses. But
23 the word is "reasonable". I believe that if the
24 regional superintendent has refused any application for
25 an adjournment or request that witnesses be called to
26 give their testimony verbally, etc., before arriving
27 at a decision he would refer the matter to headquarters
28 where discussion would be had with the legal advisors
29 of the Department.

30 Q. This brings me to another question. Do



1 you think that once the Pilotage Authority has delegated
2 power to the local supervisor by by-law approved by the
3 Governor-in-council that the employees of the Pilotage
4 Authority in Ottawa, having no status under the by-laws,
5 can give directions, mandatory directions, to the
6 local supervisor or in other instances perhaps modify
7 his decision?

8 A.. No, I doubt that very much. But I
9 do feel that although the Act deals in these two
10 different places with the delegation of authority, I
11 think there is a tendency nowadays to recognize that
12 certainly any Ministers of the Crown where they are
13 mentioned in statutes are entitled to delegate informally
14 to their officers the power to make certain decisions
15 that are by statute given to such Ministers. Even
16 though the Interpretations Act contains the provision
17 that the Deputy Minister may do everything that the
18 Minister can, the courts today, I believe, would hold
19 that the action of people on a lower level than the
20 Deputy is still the action of the Minister. So I
21 believe myself that even though the Pilotage Authority
22 has not passed a by-law delegating to Captain Slocombe
23 some of the functions that he carries out, nevertheless
24 if these functions, if he is told by the Pilotage
25 Authority to go ahead and handle something, I believe
26 the courts would find that he is validly acting for
27 the Minister.

28 Q. I have another question in the same
29 vein. Do you think that once again if the Pilotage
30 Authority by by-law approved by the Governor-in-council,



1 having delegated part of its authority to the local
2 supervisor, the Pilotage Authority can interfere or
3 modify the authority granted to the local supervisor
4 without an amendment to the by-law or can control the
5 exercise of that authority?

6 A. Well, I think to this extent --- I
7 take it you are thinking of this case where the Pilotage
8 Authority by by-law has given the superintendent the
9 power to impose penalties up to \$40.00?

10 Q. Yes.

11 A. And the power to compel the attendance
12 of the pilot before him. I am not sure whether, if a
13 superintendent imposed a penalty in such a way as was
14 contrary to the instructions that are given to him as
15 to how he should conduct his hearing -- I am not sure
16 whether that would invalidate his power. But certainly
17 I think the attitude has been that it is up to the
18 Minister to overrule the superintendent if he assesses
19 a penalty which the Minister thinks has been improperly
20 assessed.

21 THE CHAIRMAN: Over rule by a quash or by
22 modification?

23 MR. MACGILLIVRAY: Either way, my lord.

24 MR. JACQUES, Q: Under what provision of
25 the law or the by-law could the Pilotage Authority --
26 which, by the way, includes the Minister of Transport
27 and the Deputy Minister of Transport and the Minister
28 acting in the absence of the Minister of Transport --
29 under what section of the law or any valid by-law could
30 the Pilotage Authority be, as it were, an appeal court



1 from the decision of the local supervisor?

2 A. I have never looked into that question;
3 it has never been brought up. I have never studied that,
4 never tried to arrive at an opinion on that. I know it
5 has been done.

6 THE CHAIRMAN: If you are going to pass onto
7 another question, you should ask the other counsel if
8 they want to ask questions.

9 MR. JACQUES: I thought, my lord, they would
10 as usual have rudely interrupted me.

11 MR. BRISSET: I have no questions.

12 THE CHAIRMAN: Mr. Lalonde?

13 MR. LALONDE: No questions, my lord.

14 THE CHAIRMAN: That is all right; carry on.
15 I may say that you may carry on for another half an hour
16 without recess. Would that be all right for everybody
17 --- 4:15?

18 MR. JACQUES, Q: Now would you continue,
19 please?

20 A. This is the most simple type of hearing,
21 the appearance before the local officer of the Authority,
22 and summary punishment with the provision that if the
23 man objected to the way the case was going, objected in
24 such a way that it appeared that he thought he was not
25 being given a fair hearing, the superintendent is not to
26 proceed unless he first refers the matter to headquarters.
27 By the way, the provision firstly was that the pilot was
28 to be given to the election of appearing before
29 the local officer of the Authority, the regional
30 superintendent. He might elect to appear or to do the



1 thing by writing. If he does it by writing, again the
2 regional superintendent should have assistance from
3 headquarters in getting legal advice, etc. If legal
4 arguments were raised he should ask for legal advice
5 from that department of headquarters. Then if the
6 pilot refused to appear before the regional superintendent
7 or just did not appear the pilot would be deemed to have
8 admitted a violation of the by-laws and he would
9 proceed and assess whatever penalty he felt suitable
10 within his power.

11 Q. Would not a refusal to appear be
12 an offence against the by-law?

13 A. Well, we felt that it might be that
14 a pilot would like to phone up and say:

15 "I am not coming, go ahead
16 and assess your penalty".

17 The other alternative was that the case might be dealt
18 with by the Pilotage Authority itself at headquarters.
19 The provision there was that a letter, a "show-cause"
20 letter, would be sent to the pilot in which would be
21 set out the gist of the evidence against him. In the
22 letter would be set out something in the nature of a
23 statement of the case; that is, that upon such and such
24 a date it was alleged that you did such and such
25 in violation of the by-laws and that an investigation has
26 been carried out and the imposition of a penalty has
27 been considered. Also the practice is, if the evidence
28 against him is available in written form, he be given
29 a copy of the letter later on and then invited to show
30 cause why that penalty should not be imposed. The pilot



1 then would come back with his argument and affidavits,
2 if he has that type of evidence available, if he is
3 disputing the facts.

4 Here again if the case is at all of a
5 serious nature it would be unlikely that the pilot would
6 be content with this type of hearing and there would be
7 a complaint from him that he was not able to cross-
8 examine witnesses, etc., whereupon it would be then
9 decided whether or not an inquiry should be held in a
10 formal manner.

11 Up until about a year ago, I guess it was,
12 we were holding inquiries under the Authority of
13 section 579 of the Act.

14 Q. You are away ahead of me now; I have
15 not reached that point yet. But isn't this "show-cause"
16 letter a complete reversal of the burden of proof?
17 Are you not in fact telling the pilot: "Look, pilot,
18 we have this evidence on hand and unless you show that
19 you are not guilty we propose to fine you, punish you."?

20 A. No, I do not believe, certainly of
21 recent times that this has been so. Perhaps when we
22 began this procedure I think that is the type of letter
23 that was sent out -- that having reviewed the evidence
24 the Pilotage Authority is now contemplating the
25 imposition of a penalty; tell us what your evidence is
26 against it. But I think in some recent cases there
27 has been rather a letter saying:

28 "The allegation against you
29 is so and so; if this allegation
30 is true it is a violation of"



1 such and such a section of
2 the by-laws. We are enclosing
3 copies of the letters or
4 affidavits or whatever it is
5 that we have received in the
6 matter and we give you so much
7 time in which to give your
8 version of the case."

9 MR. JACQUES: My lord, I wonder if the
10 Commission is interested in obtaining copies of these
11 or examples of these letters?

12 THE CHAIRMAN: We may leave that request
13 until later on.

14 With regard to the show-cause, I think we
15 should make a distinction between cases of discipline and
16 cases of administration or exercise of the proper
17 service by the Authority. I know that in the army -- I
18 have some experience there -- we have some show-causes
19 like that. That was with regard to the financial
20 provisions and we used to send letters to an officer
21 inviting him to show cause as to why his pay should not
22 be stopped for so many days to reimburse the Crown for
23 losses of things that it was his responsibility to answer
24 for.

25 MR. MCGILLIVRAY: Yes.

26 THE CHAIRMAN: So very clearly you have a
27 show-cause burden upon him in the regulations.

28 MR. JACQUES: Such a thing exists even
29 today in the Financial Administration Act.

30 THE CHAIRMAN: Yes.



1 MR. JACQUES: Which is more or less a show-
2 cause act. It is provided for in the Act.

3 Q. And the procedure which you have
4 outlined would, I imagine, apply only for offences against
5 the pilots enacted under section 329.

6 A. Yes.

7 Q. And nothing else?

8 A. Only. This would apply only in cases
9 where there is a possibility of punishment being awarded
10 by the Pilotage Authority and that, of course, implies
11 an infraction of the pilotage by-laws.

12 Q. Enacted under section 329.

13 A. Yes, or under whatever authority they
14 are enacted under, if it is the same thing here as in
15 327.

16 Q. The ordinary text of sub-section (g)
17 of section 329 limits the power for punishment to
18 breaches of regulations made to this section which is
19 section 329.

20 A. Yes, I see.

21 Q. I imagine that will be so.

22 A. Yes.

23 Q. Now, would you tell us what the new
24 procedure is. You mentioned formerly you had this
25 and that.

26 A. As I say I think the procedure now is
27 more in line with what you were criticizing about the
28 earlier procedure. I have not --. I would have to
29 refresh my memory and we could produce an example of one
30 case that has been dealt with by this exchange of letters,



1 giving the form of the show-cause letter.

2 I think that the more recent ones are -- that
3 the earlier ones were perhaps faulty in that the
4 Pilotage Authority would say after having reviewed the
5 evidence it has heard, "it appears to me that there is
6 a case against you."

7 I do not think that is now being said.

8 THE CHAIRMAN: So, having provided such a
9 case, it will be treated on the same basis as we have
10 done before. That means, it is available for counsel
11 but not for the public.

12 MR. LANGLOIS: Is it not a fact that such
13 a letter is the same as the previous one? The pilot
14 has to present an argument on his behalf or else he
15 shall be suspended.

16 MR. MACGILLIVRAY: Well, I am not sure. As
17 I say I would have to look it up. We can certainly
18 produce a copy of the letter. I doubt that we have
19 said that he shall be suspended unless he produces --
20 I think the statement is made that punishment is being
21 considered and that he is therefore invited to show
22 cause but I cannot testify as to this.

23 THE CHAIRMAN: So you will bring an actual
24 case so we can see at the next hearing when the
25 Department is here. I think it is on the 1st of
26 October now.

27 MR. JACQUES, Q: Do you consider that in
28 disciplinary matters either the local supervisor or
29 any other authorized supervisor as appointed by the
30 Pilotage Authority, acts in a judicial or quasi



1 judicial capacity when they hear these cases?

2 A.. Oh yes, in a quasi judicial capacity,
3 yes. I think anyone who is authorized to impose
4 punishment should act in a judicial manner and as bound
5 by the Bill of Rights and is acting in a quasi judicial
6 fashion.

7 Q. Do you consider it is sufficient to
8 meet the requirements of the law in general if the
9 Pilotage Authority, having gathered this evidence before
10 and communicating with the pilot, renders judgment or
11 passes judgment on that evidence.

12 A. Yes, I do; bearing in mind that if a
13 pilot feels he is being badly done by in this procedure,
14 he will say so.

15 It is always open to the Pilotage Authority
16 then to say "Very well, we will have a hearing"; where
17 the pilot might appear and give his -- hear whatever
18 verbatim evidence is available against him and give his
19 own evidence and give his own testimony.

20 Q. Have you had such a case in your
21 experience?

22 A. Yes, I believe -- I am not under oath
23 and I won't guarantee the correctness of this, but I
24 believe ---

25 Q. It doesn't seem to make any difference
26 anyway, sometimes.

27 A. I think there have been occasions
28 where we have thought we might proceed by means of a
29 show-cause letter and the argument put forward by the
30 pilot was so violent that the decision was made "We would



1 have a hearing under section 579", and allow him to
2 bring his own witnesses.

3 Q. What was the pilot charged with?

4 A. I can't recall. I would imagine it
5 was failing to exercise proper care and diligence in the
6 conduct of the vessel.

7 THE CHAIRMAN: Excuse me, before you go
8 ahead. Did you mention before that the supervisor or
9 superintendent or the Authority in these cases are
10 acting in a quasi judicial manner. Would they have the
11 power to administer the oath?

12 MR. MACGILLIVRAY: I believe under the
13 Evidence Act they have -- any person who is authorized
14 to hear evidence is authorized to administer an oath.

15 Our practice, to make sure in cases of
16 regional superintendents was to have him appointed a
17 Commissioner for Oaths in the province and he then
18 administers the oath.

19 THE CHAIRMAN: Yes, he can administer the
20 oath but can he compel somebody to ---

21 MR. JACQUES: Section 13 of the Canada
22 Evidence Act reads as follows:

23 "Every court and judge and
24 every person having by law or
25 consent of parties the authority
26 to hear and receive evidence
27 has power to administer an oath
28 to every witness who is legally
29 called to give evidence before
30 that court, judge or person".



1 THE CHAIRMAN: Yes.

2 MR. JACQUES: Now, the local supervisor
3 has the authority to compel attendance of a pilot before
4 him. He might have authority to receive evidence
5 under section 329(h) which empowers the Pilotage
6 Authority to provide for evidence.

7 THE CHAIRMAN: That is right.

8 MR. MACGILLIVRAY: Yes.

9 MR. JACQUES, Q: He would not have authority
10 to compel the attendance of anyone else?

11 A. That is correct.

12 Q. He might not even have authority to
13 compel the attendance of a dispatcher.

14 A. Well, a dispatcher, being an employee
15 of the Authority will attend if he is told to. I don't
16 think we envisage this as a problem. The fact is
17 even if the request were made under (f) of section 329,
18 they could not provide for compulsory attendance because
19 the Act does not provide for that.

20 Q. So we are left with ---

21 MR. LALONDE: My friend referred to section
22 579 and the necessity of having an inquiry. Section
23 579 provides for an inquiry in cases of masters, mates,
24 or engineers.

25 MR. MACGILLIVRAY: Section 568, subsection
26 2 says that:

27 "The provision of this part
28 leading to the manner in which
29 such certificates"-- that is the
30 certificate of masters, mates and



1 engineers -- "shall be dealt
2 with shall, so far as they are
3 applicable extend to pilots
4 licences".

5 I may say that, as I believe I have said before, these
6 inquiries have only been held up until about a year and
7 a half ago at which time -- or maybe a year ago -- at
8 which time the Pilotage Authority was advised by the
9 Department of Justice that there was doubt whether our
10 interpretation of these two sections was correct.

11 That is to say, there was doubt whether section 579 was
12 the appropriate provision to be used in investigating
13 pilotage offences.

14 MR. JACQUES, Q: I would like to come back
15 to section 579 a little later. I would like to try to
16 clear up the Authority of the supervisor. As I say,
17 we are now left with what can legally happen. The
18 pilot can be accused by anyone, not necessarily a
19 dispatcher, of an infraction under the by-law. The
20 pilot can be forced to attend under penalty before
21 the supervisor. The supervisor cannot force to
22 attend the party making a claim against the pilot. The
23 supervisor has no authority over that person since he
24 may not be a pilot. What would happen then? The case
25 would be thrown out?

26 A. Well, I perhaps would meet that case
27 when we come to it.

28 Q. You have not thought about that?

29 A. This is --- I must say that in thinking
30 about cases before the regional supervisor and cases



1 before the regional supervisor and cases to be dealt
2 with by the exchange of letters rather than viva voce
3 hearings, the thought has been these are minor cases
4 probably not subject to much contention and with the
5 more important cases a live hearing should be held.

6 Q. A live hearing. What do you mean a
7 live hearing, before a supervisor in his capacity as
8 supervisor or a live hearing under section 555 or 579,
9 whatever it is.

10 A.. Under the Act.

11 Q. Not in his capacity as a local
12 supervisor.

13 A. And not before the local supervisor.

14 If it is a case which might involve as much
15 as suspension of the licence for a month or even a
16 couple of weeks ---

17 Q. So, in fact, with respect to matters
18 before the local supervisor you rather hope that nobody
19 will pay too much of a fuss over the procedure.

20 A. That nobody would rock the pilot boat.

21 Q. What is the status of the pilot during
22 all that time that he is before the supervisor? This
23 may last a long time.

24 A. I would not think any of these cases
25 would cause him to lose more than one turn.

26 Q. Say he has lost one turn. Now, the
27 Quebec pilot in theory receives pilotage dues less what
28 has been paid to the pension fund. Therefore he has
29 lost one turn. He has lost money.

30 A. If you are asking about the practice,



1 that is not something on which I would testify although
2 I believe it has been the practice to allow him to make
3 up his turn afterwards. If you are asking about
4 whether it is proper that a person should suffer a
5 pecuniary loss while his actions are being investigated,
6 I think it is unfortunate but I don't think it is
7 improper; in the same way as a person who is arrested
8 for a criminal offence and if not brought to trial for
9 a couple of months because of the difficulty of obtaining
10 evidence -- if he is not allowed out on bail or cannot
11 afford the bail required, it is just one of those
12 unfortunate sides of our law that he takes this
13 punishment.

14 Certainly it has been the endeavour of the
15 Department not to have a person off turn any longer
16 than is necessary.

17 Q. Indeed, sir, but you must also be
18 aware that in cases of criminal suits, if it is
19 eventually found that the charge was without any
20 foundation at all, that the accused, found not guilty,
21 can claim damages from whoever charged him with the
22 offence.

23 A. Not every time he is found not guilty.

24 Q. Not every time he is found not guilty,
25 no.

26 THE CHAIRMAN: If there was no reasonable
27 ground.

28 MR. JACQUES, Q: If there was no reasonable
29 ground.

30 A. Yes, I presume that a person --- a



1 pilot similarly could claim against any persons who made
2 a false allegation about him.

3 THE CHAIRMAN: This is the same.

4 MR. JACQUES: What if the allegation
5 is made by the Pilotage Authority?

6 THE CHAIRMAN: It should be tort.

7 MR. MACGILLIVRAY: If it is tort, it is a
8 sort of thing a pilot ought to recover damages for.

9 MR. JACQUES: Q: It is your opinion that
10 the Pilotage Authority should be liable in tort?

11 A. I wonder if this opinion is particularly
12 valuable.

13 THE CHAIRMAN: No, just go on.

14 MR. JACQUES: It is indeed very
15 valuable.

16 THE CHAIRMAN: He is trying to provide for
17 some future cases. Are you going to change the
18 subject now?

19 MR. JACQUES: One last question, my lord, if
20 I may. I notice that Mr. Macgillivray is consulting a
21 file whilst he was making comment for the Commission.
22 I wonder if he could not let us have perhaps the
23 instructions which he was reading from. Instructions
24 which he has prepared himself, I am told for local
25 supervisors and staff of the Pilotage Authority in
26 Ottawa.

27 MR. MACGILLIVRAY: Well, I should say on
28 this, my lord, what I have been consulting is a piece
29 of paper that appears on one of the Department's
30 files. It is dated February 14th, 1961. It is headed



1 up "Instructions received, pilot discipline".

2 It has been considerably marked over in
3 pencil. Some of the marks I recall making myself
4 and we have indicated possible deletions of this
5 thing, there having been the thought of subsequent
6 instructions that would not be quite so lengthy as this
7 is.

8 I am not sure whether this is the one that
9 was referred to this morning as having been sent out
10 to the local supervisors but I was hoping -- I hope that
11 is what it is and we can give you a copy of this.

12 THE CHAIRMAN: So this can be verified and
13 checked for us.

14 MR. JACQUES: There was in fact a set of
15 instructions issued.

16 MR. MACGILLIVRAY: To the best of my
17 knowledge, there were. I am not positive that these
18 were them.

19 THE CHAIRMAN: You will verify that.

20 MR. JACQUES: Could Captain Slocombe check
21 whether these instructions were issued?

22 MR. MACGILLIVRAY: Yes.

23 MR. JACQUES: And when.

24 MR. MACGILLIVRAY: Yes, we will check
25 that.

26 THE CHAIRMAN: And if they were issued and
27 sent to the superintendent and the supervisors. You
28 will find that out?

29 MR. MACGILLIVRAY: Yes.

30 THE CHAIRMAN: We are going to adjourn



1 now until Monday morning at 10:00 o'clock as usual and
2 we might not start at 10:00 o'clock sharp if by chance
3 the President and the other Members of the Commission
4 are late.

5
6 ---Whereupon the Commission adjourned until Monday,
7 September 28th, 1964 at 10:00 o'clock a.m.
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ROYAL COMMISSION

ON

PILOTAGE

HEARINGS

HELD AT

OTTAWA

VOLUME No.:

148

DATE:

Sept. 28, 1964

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1
2 ROYAL COMMISSION ON MARINE PILOTAGE

3
4 Proceedings of the hearing held
5 in the Exchequer Court Building,
6 Ottawa, Ontario, on Monday, the
7 28th day of September, 1964.

8 COMMISSION:

9 The Honourable Mr. Justice Bernier Chairman
10 Mr. Robert K. Smith Member
11 Mr. Harold A. Renwick Member
12 Mr. Gilbert Nadeau Secretary

13 COMMISSION COUNSEL:

14 Mr. Maurice Jacques

15 PRESENT:

16 Mr. J. Brisset, Q.C. for the Shipping Federation
17 of Canada
18 Mr. Marc Lalonde for the Federation of St.
19 Lawrence River Pilots;
20 Corporation of the Lower
21 St. Lawrence Pilots; Cor-
22 poration of Montreal Harbour
23 Pilots; Corporation of the
24 Mid-St. Lawrence Pilots;
25 Corporation of the St.
26 Lawrence River and Seaway
27 Pilots; Corporation of the
28 Upper St. Lawrence Pilots
29 Mr. R. Langlois for the Canadian Merchant
30 Service Guild



19024

Ottawa, Ontario,
Monday,
September 28, 1964

---Upon commencing at 10.15 a.m.

MR. JACQUES: We have this morning, sir, with us the International Association of Great Lakes Ports. A brief has been filed with the Commission and it will now be filed as Exhibit No. 1350.

THE CHAIRMAN: A brief with the annex?

MR. JACQUES: With the annex, entitled "Examples of Unplanned Land Rate Structures."

---EXHIBIT NO. 1350: Brief of International Association of Great Lakes Ports and annex "Examples of unplanned land rate structures."

MR. W. M. H. COLVIN: My name is Colvin. I am chairman of the Canadian Section of the International Association of Great Lakes Ports. I am here this morning with Captain Cook, the port director of Muskegan, and Mr. Louis C. Purdey, the port director for the Port of Toledo, who is the chairman of our Pilotage Committee in the Association and as such will act as spokesman this morning.

Mr. Purdey?

THE SECRETARY: Could Mr. Purdey take the stand?

MR. COLVIN: If he would, yes.



1 Q. How long has this committee been in
2 existence?

3 A. The committee has been in existence,
4 I think, about two and a half years.

5 Q. Would you tell us what prompted the
6 creation of that committee?

7 A. The creation of the committee was
8 prompted by the succession of changes in regulations,
9 a succession of requests for additions to the rates,
10 a succession of hearings where our voice seemingly
11 was somewhat lost, and we decided that as an Associa-
12 tion it might be possible to get something done where
13 the individual ports had found it very difficult.

14 Q. How many members are on this Pilotage
15 Committee?

16 A. There are only three members of the
17 Pilotage Committee.

18 Q. Are they from different ports?

19 A. Yes, sir.

20 Q. Would you name them, please?

21 A. I am the chairman of the committee.
22 Captain Joseph V. Cook, of Muskegan, is a member of the
23 committee and Captain John Manley, of Chicago, is the
24 other member of the committee.

25 Q. From your brief I take it that you
26 have read the brief filed by the Shipping Federation
27 of Canada?

28 A. Yes, sir.

29 Q. Both with respect to the Great Lakes
30 and with respect to pilotage in the St. Lawrence. Have



1 you had occasion to read any of the other briefs pre-
2 sented to the Commission, such as the brief presented
3 by the pilots?

4 A. We have not. We have not had access
5 to them.

6 Q. You have not had access to them?

7 A. No, sir.

8 Q. There are three recommendations in
9 your brief. The first one reads as follows:

10 "Adopting as quickly as possible
11 the International Rules of the Road
12 for application within the Great Lakes."

13 A. Yes, sir.

14 Q. I believe there is a joint committee
15 set up by the United States Coast Guard and the
16 Department of Transport to investigate this matter
17 and study this matter. Are you aware of that?

18 A. Yes, sir. I have a complete set
19 of recommendations that were made by the United States
20 Coast Guard, which are requests to my Association for
21 examination and a recommendation. This is a copy of
22 the letter of transmittal and this is the index of
23 comments on the differences which were forwarded with
24 that letter, if you would care to glance through it,
25 sir.

26 Q. I wonder if you would be kind enough
27 to let us have this copy of the document, if it is
28 possible?

29 A. Excuse me, my lord; I would be de-
30 lighted to let him have this copy for reproduction. I



1 would hope that I might be able to get it back. It
2 is the only one that I have.

3 THE CHAIRMAN: This could be arranged.
4 We will see to it later.

5 MR. BRISSET: My lord, we have these
6 rules and proposals. They have been reproduced and
7 we can supply the Commission with copies.

8 THE CHAIRMAN: That is all right.

9 MR. JACQUES: We might then, my
10 lord, file these documents as Exhibit 1351, entitled
11 "Comments on differences between the Coast Guard
12 proposal to unify the United States Rules of the Road
13 and the Great Lakes Rules."

14 ---EXHIBIT NO. 135: Documents entitled
15 "Comments on differences
16 between the Coast Guard
17 proposal to unify the
18 United States Rules of
the Road and the Great
Lakes Rules."

19 MR. JACQUES:

20 Q. Would you mind elaborating on this
21 first recommendation, Mr. Purdey? Do you think that
22 the differences between the two sets of rules, the
23 Great Lakes and the International rules is so great
24 as to make an important difference to the mariner
25 plying on the Great Lakes?

26 A. Since the primary objective of
27 pilotage is safety this appears to me to be a most
28 important thing -- to unify the rules. For further
29 commentary on the differentials in the rules and their
30 proper application I would respectfully request that



1 you address the questions in this particular field to
2 Captain Cook , who is much more knowledgeable on a
3 more up-to-date basis than I am. My own water ex-
4 perience is somewhat in the past.

5 Q. Thank you. Now with respect to
6 the second recommendation, which reads as follows:

7 "A change in the present method
8 of clearing vessels for Great Lakes
9 operations by setting up a thorough check
10 on the vessels and the qualifications
11 of its personnel at the first port of
12 call, which would be Montreal."

13 A. Yes, sir.

14 Q. First with respect to your point of
15 view on pilotage, would the clearing of vessels have
16 any detrimental effect? Would there be too
17 much delay involved or would the inspection which is
18 carried out in Montreal at the moment be deemed insuf-
19 ficient?

20 A. I think that the question runs over
21 into the third recommendation which has to do with the
22 elimination of pilotage on open waters and therefore
23 changes in the B certificate requirements, so the
24 inspection would have to do with a reduced requirement
25 on these certificates. But to be absolutely certain
26 that the English capabilities in the officer personnel
27 on the foreign vessels were satisfactory, this would
28 be something, of course . . . Any changes in this, of
29 course -- any changes at all would take a little bit
30 of time for anybody to get used to. But the clearance



1 of the vessel and the clearance of its personnel should
2 be accomplished before the vessel enters into the
3 Great Lakes System in my opinion.

4 Q. There has been some evidence in that
5 respect given by the Seaway Authority and if my memory
6 serves me right they were interested only in the
7 physical aspect of the inspection -- whether the ship
8 was fitted with the proper winches and had the proper
9 gear on board. They never went into the qualifica-
10 tions of the master or mates who sail the vessels.
11 That was suggested to them and they said they relied
12 in that respect on pilots.

13 A. Well, I think that I would repeat
14 something that we have stated here and that is that
15 we are not recommending any situation which would
16 lessen a safety requirement. We feel that there
17 certainly should be an officer on board that ship
18 who can adequately understand English for radio-
19 telephone purposes at least, that this officer should
20 by virtue of the fact that he has his ticket be able
21 to navigate and that he should be able to navigate
22 open waters.

23 Q. Are you aware of the Canadian require-
24 ments that there be on board every vessel a radio
25 operator familiar with the English language? This
26 comes under both the Seaway Regulations and also the
27 International Convention for Radio-telephony and radio-
28 telegraphy.

29 A. I understand that, sir. This is a
30 requirement which I think would be a partial



1 substitute for some of the tightness of this B certifi-
2 cate requirement.

3 Q. Now, with respect to the fourth recom-
4 mendation, which is far-reaching, and I should like to
5 quote:

6 "That as suggested by the
7 Shipping Federation of Canada some
8 programme should be instituted to
9 allow closer liaison between members
10 of the shipping interests and the
11 United States Great Lakes Pilotage
12 Administration and the Canadian
13 Government."

14 We all know that at the moment the pilotage operation
15 on the Great Lakes is a joint operation and the mere
16 fact that it is joint seems to give rise to several
17 problems of communications and application of the law,
18 interpretation of the law and procedural problems
19 also, because the Great Lakes Pilotage Administration
20 does not follow the same procedure as the Department
21 of Transport with respect to rule-making and the
22 fixing of tariffs?

23 A. Yes.

24 Q. Have you thought of the creation of
25 spheres of influence on the Great Lakes where one
26 country or the other, but not both, would be entrusted
27 with providing pilotage services and overseeing pilot-
28 age? Let us say for instance that Montreal and
29 Kingston would be Canadian, and Port Weller, Port
30 Colborne and the Welland Canal would be Canadian, whilst



1 the Detroit River and the St. Clair River would be
2 American. Have you thought of this aspect?

3 A. No, I have not given a great deal
4 of thought to it. On the surface it would seem to
5 be interesting but I would prefer not to give any
6 conclusions where I have given no thought.

7 Q. Would you elaborate on what you have
8 in mind when you make your fourth recommendation with
9 respect to closer liaison between members of the
10 shipping interests and the United States Great Lakes
11 Pilotage Administration and the Canadian Government?

12 A. Yes. I can give you an example
13 of it. For instance, we had a hearing in Detroit,
14 Michigan, on April 13th and 14th.

15 Q. Of 1964?

16 A. Of 1964. The Pilotage Administration
17 was represented by Captain Meschter and Mr. Harold
18 Butts and Mr. Robert O'Mahoney of the legal staff of
19 the Department of Commerce. At that particular
20 hearing a statement was presented on behalf of the
21 International Association of Great Lakes Ports.
22 The statement was presented by Mr. Edwin F. Avery,
23 Manager of the Commerce Department of the Toledo-
24 Lucas County Court Authority. In that particular
25 statement he stated, and I quote:

26 "The notification did appear
27 in the federal registry on March 19th.
28 Allowing for ordinary mail delivery
29 time this was not brought to the
30 attention of the Association until



1 approximately March 23 -- only
2 twenty days prior to the hear-
3 ings. Thus there was not suf-
4 ficient time to re-schedule the
5 regular meeting -- "

6 the regular meeting of the board of the International
7 Association of Great Lakes ports.

8 Q. I see.

9 A. "-- which had previously been
10 set for April 9th. The short
11 notice by your Administration
12 precluded proper exploration of
13 our records and prevented the
14 necessary inquiries to deter-
15 mine the effect of this pro-
16 posed legislation on the opera-
17 tion and development of our
18 ports.

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1 "The copies of the
2 proposed changes, which were
3 mailed by the Pilotage Adminis-
4 tration, were not received by
5 the parties of record until
6 March 30 . . ."

7 A little later, in the particular statement which we
8 made at that hearing, we note that

9 ". . . We find out that the
10 pilots themselves had been
11 given copies of the material
12 back as early as February 4th. . ."

13 and this is the basis of our request for liaison.
14 We feel that any of these hearings must have a definite
15 objective, that the hearings probably should be the
16 result of a combined meeting at which it should be
17 decided that it is desirable to reach that objective;
18 therefore, the purpose of the hearing itself should be
19 as a result of the decision which has already been
20 made to explore an objective.

21 In this particular case the Canadian
22 counterpart of the United States Pilotage Administra-
23 tion claimed that they had no knowledge whatsoever
24 of this proposal, and this is the thing, sir, to which
25 we object. We feel that the liaison should be much
26 more complete in order to be able . . .

27 Q. Do you feel that members of the
28 shipping industry should be members of the Pilotage
29 Authority, whatever it may be, in the future?

30 A. I certainly feel that they should be



1 consulted, and I feel that the people who operate the
2 ports, the people who are responsible to the general
3 public in both countries, for public investment in
4 excess of \$1 billion in the Great Lakes, that they, too,
5 I think, have a right to be considered.

6 Q. Is there anything else which you
7 would like to add to your brief and/or what has been
8 said so far?

9 A. I think probably the only thing that
10 I would add would be my thanks for being permitted to
11 be here.

12 The supplementary piece of material
13 which we provided in the way of examples of unbalanced
14 land rates point up the extremely competitive situa-
15 tion which is connected with the growth of the Seaway,
16 and I think this is a point which I should like to
17 emphasize, that the Seaway itself is something that
18 has been fought by organized opposition for over
19 forty years. This opposition did not give up when
20 the Seaway became a fact. We now see such interesting
21 names in Washington, sir, as a "New York-New Jersey
22 Committee for a Sound Seaway." This, I think . . .

23 Q. Excuse me laughing.

24 A. Your reaction, of course, is the
25 same as any other person who would be looking at it
26 from a logical standpoint. You would know immediately
27 the source of the organization of the committee. It
28 is hosted by the North Atlantic N. A. Ports
29 Association. It isn't even thinly veiled. It is
30 an organization that is made up of its members.



1 I know that this is the committee
2 and absolutely insists that the bonds should be paid
3 off on the Seaway at the moment that they are due --
4 that they should be immediately paid; that the toll
5 should be increased; that there should be no considera-
6 tion whatever given to the fact that possibly the
7 Seaway is going a little more slowly than had original-
8 ly been anticipated with their rose-coloured glasses;
9 but, nevertheless, they still provide a core of
10 organized opposition which is carried out by the trunk
11 line carriers.

12 It might be well to inform you, sir,
13 that in 1907 a formula was evolved in land transporta-
14 tion known as the Todd-Knott formula of port differen-
15 tials. The effect of this formula of differentials
16 was to divide all of the business in the middle of the
17 continent of the United States -- all of this port
18 business was divided by this formula -- between the
19 north North Atlantic ports and the south South
20 Atlantic ports, with a differential ranging from one
21 to three cents per hundredweight; and the further
22 south ports such as Hampton Roads -- Hampton Roads
23 operates at a three-cents per hundredweight advantage.

24 Now, this started in 1907. The
25 district apportionment was cut off approximately at
26 Kansas City, Missouri, and, therefore, the gulf ports
27 received their portion of the mid-continent business,
28 the North Atlantic ports received their apportionment
29 of the balance of the business, therefore, the rates in
30 the middle of the United States grew like Topsy into



1 the most inconceivable hodge-podge you could imagine,
2 and all on this long-haul competitive basis and with
3 these differentials in mind.

4 Now, when the St. Lawrence Seaway
5 comes along we find, therefore, a discriminatory set
6 of rate structures which have grown over a period of
7 53-54 years chiefly because nobody did anything about
8 it.

9 In our office for over four years
10 we have made these studies and we have attempted to
11 explain in this particular way with these charts,
12 showing the disparities in pricings. We have
13 attempted to show just what this means if rates
14 were properly equalized, the additional business that
15 is available to the Great Lakes and the St. Lawrence
16 Seaway, and the smallest variations in pricings price
17 us out of business. Therefore, anything that adds
18 to cost becomes something where we must take a more
19 than ordinary look at it.

20 I would call your attention to this
21 chart on page 7 -- this chart on road-making machinery.
22 There is a reference in our brief to rates where there
23 is practically no profit involved in the carrying of
24 this on the so-called carriage to the east coast ports.
25 On this road-making machinery from Galleon, without
26 making any attempt to adjust these rates, you see that
27 the rate actually charged to New York today is 88 cents,
28 that the cost of transportation is 87 cents, and that
29 makes one cent profit. Now, it is only 79 miles to
30 Cleveland from Galleon. The rate is 67 cents. There



1 is 17 cents profit in that for the rail carrier. He
2 does not have 608 miles of wear and tear on his
3 equipment to account for. And naturally his full
4 profit is in excess of that 17 cents.

5 Now, the key to this actually is in
6 the charts at the rear of the book. I want to find
7 this same rate in the charts back here. That would
8 be found on page 22.

9 Now, commodity rates are established
10 on land by the Interstate Commerce Commission, at the
11 request of carriers on a basis of percentage of first
12 class. First class is the package rate that has been
13 set by the Commission in a very comprehensive study
14 which was completed in 1950, which establishes these
15 rates on a first-class basis. Every cost -- the
16 originating cost, the carrying cost, the final
17 switching cost -- is taken into consideration in the
18 setting of this rate, so a commodity rate is almost
19 always expressed originally in the request as the
20 percentage of such class. We find, therefore, these
21 rates -- that rate which goes to New York -- in
22 the third column from the right-hand side of the page,
23 and you will note that even the weight requirements
24 only bring the percentage of first class down to
25 20.9 per cent. The rate from Galleon to Cleveland,
26 however, is only in one class, as a commodity, and it
27 is 45.2 per cent of first class. In other words,
28 a complete pattern of percentage discrimination exists
29 in almost every basic commodity shipped from the
30 middle of the United States from almost any of these



1 places into the east coast.

2 After four years of intensive opera-
3 tions in this field our office and our consultants have
4 been able to make changes in about 3500 rates out of
5 a required change factor of over 22,000.

6 Q. But in referring to page 7, with
7 reference to the road-making machinery, it seems that
8 the railroad should ship through Cleveland. It seems
9 more profitable than shipping through New York?

10 A. Well, I think you are making the
11 mistake of being logical! This is what we tried to
12 tell the railroads. I don't know how you explain
13 to your stockholders, if you have an opportunity to
14 make 17 cents on a cost factor of 50 cents and de-
15 liberately solicit a profit of one cent on a cost
16 factor of 87 cents -- I don't know how you explain
17 this to your stockholders. I couldn't; but they are
18 smarter than I am, I guess.

19 Q. With reference to page 22 would you
20 explain what you mean by "Cleveland rate disability"
21 in the extreme right-hand column?

22 A. Well, now, "Cleveland rate disa-
23 bility" means that there should be a reduction of
24 a minimum of 31 cents per hundredweight on the original
25 67-cent rate from Galleon to Cleveland, for a minimum
26 of 48,000 pounds; that the rate should be reduced 33
27 cents for 100 net tons; and should be reduced 36 cents
28 for 200.

29 Q. Now, have you studied, or your
30 Association or Pilotage Committee -- studied the



1 opportunity of having port pilotage in your own port
2 as opposed to pilots covering a whole area?

3 At the moment the pilots are stationed
4 . . .

5 THE CHAIRMAN: Prior to getting to
6 that, I gather from the brief that you consider pilotage
7 unnecessary? In your reports, too, you mention at
8 the beginning that the two factors you are interested
9 in would be (1) the cost of pilotage, and the other
10 is the delay that shipping may incur when a pilot is
11 not available. So, therefore, is it only because
12 pilotage is compulsory that you are affected by the
13 delay, or is this because pilotage is not necessary
14 in your ports?

15 THE WITNESS: I am concerned from
16 the standpoint of the Association, my lord. I am
17 not concerned with this from the standpoint of neces-
18 sity in Toledo harbour. There is only one reach all
19 the way from our buoy on this channel in Lake Erie
20 all the way into the inside of the mouth of the
21 Maumee River at Toledo.

22 THE CHAIRMAN: I understand that
23 you feel that under the present system there are bound
24 to be delays when no pilot is available, because they
25 have to take pilots?

26 THE WITNESS: Yes.

27 THE CHAIRMAN: But we have heard,
28 in some of the reports from the Lower St. Lawrence
29 where they say that pilotage is not necessary at all,
30 but that the requests to the ships to take pilots is



1 for a quicker turnover?

2 THE WITNESS: Yes.

3 THE CHAIRMAN: I was just wondering
4 -- you mentioned there that you were quite concerned
5 with regard to delays -- I was wondering whether it is
6 a question of necessity or just because you are com-
7 pelled to take a pilot.

8 THE WITNESS: We are concerned be-
9 cause the members of the Association -- some of them --
10 have been concerned with the delays. For instance,
11 the Director of the Detroit-Wayne Committee of the
12 Commission said something about this to me -- this is
13 a Mr. Andrew W. Fleming -- and I asked him -- this
14 was in the middle of the summer -- to let me have a
15 few examples. So he gave me four examples here of
16 the delays that he had experienced in Detroit in
17 a six-week period in the early part of this year.
18 The ship MANCHESTER RENOWN, on May 5th, was delayed
19 ten hours and fifty minutes at Detroit Harbour terminal.
20 The NORHOLT, on May 8th, was delayed eight hours and
21 forty-five minutes at the Nicholson Ecorse terminal.
22 The MARIONGA MARIS, on May 19th, was delayed three
23 hours at Detroit Harbour terminal. Excuse me. I
24 would not consider that a delay myself -- three hours.
25 The ALHELI, on June 13th, was delayed twenty-two hours
26 at the Nicholson Ecorse terminal.

27 This is a report from Mr. Andrew
28 W. Fleming.

29 Q. And the cause of the delay was?

30 A. He does not state the cause of the



1 delay. He merely tabulates the delays; so honestly
2 I don't know.

3 THE CHAIRMAN: Whether it was a
4 question of the stevedores, or the lack of pilots,
5 you don't know; because the industry have stated
6 that it is the pilots and that they have been waiting
7 there and staying too long?

8 THE WITNESS: I think that if I
9 commented too much on that it might be considered
10 hearsay and I think you want facts.

11 THE CHAIRMAN: Yes, we want facts.
12 In any case, this is going to be an indication to us
13 of where to look for it.

14 THE WITNESS: That is right.

15 MR. JACQUES:

16 Q. Do you know that today pilotage covers
17 the area of the Great Lakes and pilots are despatched
18 from a central point to outports?

19 A. Yes.

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21
22 -

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1 Q. This entails a lot of travelling and
2 of course, travelling expenses. Has your committee
3 studied the possibility of having port pilotage in
4 Detroit, Toledo or Chicago as they have in Toronto
5 and Hamilton? They have their own pilots and need not
6 if the ship has a B certificate on board, call upon
7 the district pilots, the registered pilots to come
8 and take a ship out of Toronto.

9 A. Our committee has never been asked
10 to make a study of this nature at all. I think that
11 the feeling of the Association is that the individual
12 port, if they have a need for something of this type
13 should handle it themselves or they should specifically
14 make a request for assistance. As of this date we have
15 not had one single request that a study be made in
16 any particular port, although some of our members, as
17 you know, do have this.

18 Q. So the position then might be this:
19 with respect to your own port, within your own port
20 you would leave it up to the port authorities to
21 decide whether they should make pilotage compulsory in
22 that particular port; if they decided in the affirmative,
23 it should be up to that port to provide the service.

24 A. We feel that the port authority in
25 the individual port, in conjunction with the coast
26 guard involved, should probably make their decision
27 upon the basis of safety.

28 As an Association we have not been
29 requested to study this by any of the ports.

30 Q. Your feeling is at the moment, I



1 take it, that ---

2 MR. LALONDE: Excuse me. Are you
3 asking for the witness' own view or the Association's
4 view when you are saying "your feeling"?

5 MR. JACQUES: No, the Association's
6 view.

7 MR. LALONDE: There is a difference.

8 MR. JACQUES: Yes, of course.

9 MR. LALONDE: The witness has al-
10 ready stated I think that there has not been a single
11 request for a study of that and the Association has
12 not studied it. I don't whether it is fair to ask
13 the witness to say what the Association's feeling is.
14 I suspect the Association is not even a body corporate
15 and it is probably ^{have} hard to/feelings. It probably
16 has resolutions and Minutes and things like that and
17 the witness may have feelings but this is different.

18 MR. JACQUES: Well, in marine law
19 very often sometimes a ship is personified. They
20 refer to a ship as "she". We refer to the ship as
21 a human being. We say the ship does damage or the
22 ship receives damage. The ship has done this or the
23 ship has done that. Let us say I was over-enthusiastic
24 and got carried away in the same line.

25 MR. LALONDE: I suspect so.

26 MR. JACQUES:

27 Q. Let us say the position of the
28 Association, as best you can ascertain it, would be
29 that port pilotage should be studied by each port
30 authority?



1 A. Yes, sir.

2 Q. May I even conclude your opinion is
3 that there should not be an overall obligation on our
4 pilotage in the Great Lakes area?

5 A. I think that you are asking me to give
6 you a conclusion where I myself would be the first one
7 to say I am not competent to give you such a conclusion.
8 People who have studied certain operations of the
9 waters in the Great Lakes and who are not in the ports
10 themselves have given this a great deal of study from
11 the pure standpoint of navigation and they decided
12 there are certain places where pilotage should be
13 required. I don't believe that I am professional
14 competent enough to take issue with what those gentle-
15 men have to say.

16 Q. Now, one last question. When the
17 Great Lakes Pilotage Act, the U. S. Act was adopted,
18 were you consulted or did you appear before the
19 Congress committee as an Association, of course?

20 A. We did not come into being until
21 about six months after the hearings had already been
22 closed on this particular subject. There are some of
23 us who individually presented our cases to the
24 advisory committee and the representative of the
25 Great Lakes ports at that time was Mr. Harry Brockle
26 of Milwaukee.

27 Our position was placed before the
28 Administration also by Admiral Cary of Toledo.

29 I must confess there were very few
30 things we stated in there that anybody listening to



1 would at least give us the privilege of talking.

2 COMMISSIONER SMITH: My lord, I
3 would like to ask the witness a question. Your
4 International Association is made up, according to
5 this submission, of eighteen member ports?

6 THE WITNESS: Yes, sir.

7 COMMISSIONER SMITH: Fifteen in the
8 United States and three Canadians?

9 THE WITNESS: Yes.

10 COMMISSIONER SMITH: And your
11 pilotage committee is made up of three members, as I
12 understood your evidence this morning?

13 THE WITNESS: Yes, sir.

14 COMMISSIONER SMITH: All those members
15 on the pilotage committee are from the United States
16 ports?

17 THE WITNESS: Yes, sir.

18 COMMISSIONER SMITH: Is there any
19 reason why the Canadian ports are not represented on
20 that committee?

21 THE WITNESS: I think this is at
22 their own request because each one of the Canadian ports
23 has pilots within its own harbour.

24 COMMISSIONER SMITH: That is the
25 reason?

26 THE WITNESS: Yes, sir.

27 COMMISSIONER SMITH: Thank you.

28 MR. LALONDE: I am informed that the
29 Lakehead has no local pilots.

30 THE CHAIRMAN: No longer.



1 MR. LALONDE: It had?
2 THE CHAIRMAN: It had at one time.
3 THE WITNESS: Yes, sir.
4 MR. LALONDE: In the old days?
5 THE WITNESS: Yes.
6 MR. LALONDE: Mr. Purdey, I notice
7 on pages 3 and 4 of your brief that you refer to
8 statistics taken from Canal statistics, 1962?
9 THE WITNESS: Yes, sir.
10 MR. LALONDE: The figures which are
11 indicated on the top of page 4, are these figures under
12 the definition of foreign vessel ships appearing in
13 paragraph 3 of that page 4? That is, all U.K., U.S.
14 and Canadian ships are taken off, not counted?
15 THE WITNESS: The figure which is
16 used at the bottom of page 3 is an all-inclusive
17 figure, which includes foreign registry. The figure
18 12,576 ---
19 MR. LALONDE: Yes.
20 THE WITNESS: The figure of 8,831
21 in 1962 is also a grand total which includes ---
22 MR. LALONDE: I see. And then as
23 you go further you state that the number of foreign
24 vessels remains practically constant showing 851
25 upbound transit. Is that all-inclusive also?
26 THE WITNESS: It is foreign vessels
27 only.
28 MR. LALONDE: This is excluding
29 U.K., U.S. and Canadian ships?
30 THE WITNESS: Yes, sir.



1 MR. LALONDE: All the subsequent
2 figures do not include U.K. figures, U.K. ships.

3 THE WITNESS: The subsequent figures
4 in the third sentence on page 4 which shows downbound
5 figures are 4,853 -- there is 4,543. This is for
6 Canadian only. These tonnage figures are for
7 Canadian only. Downbound is almost identically the
8 same.

9 MR. LALONDE: Why I am referring to
10 it is that I would like you to find out the figures --
11 the downbound figures are shown as 4,859 in 1959 and
12 2,827 in 1962?

13 THE WITNESS: That is for Canadian.

14 MR. LALONDE: That is Canadian owned
15 vessels.

16 THE WITNESS: These are Canadian
17 owned.

18 MR. LALONDE: You have that?

19 THE WITNESS: Yes, sir, right here.

20 MR. BRISSET: That would be lake
21 vessels, would it, or does that include ocean vessels?

22 THE WITNESS: No. These are lake
23 vessels only.

24 MR. LALONDE: Is it not fair to say
25 there is no distinction -- it may be very small anyway,
26 because there are practically no deep sea Canadian
27 vessels, but your figures on page 18 of Canal Statis-
28 tics, 1962, makes no distinction between lake vessels
29 and deep sea vessels.

30 THE WITNESS: That is correct. I am



1 sorry. It makes no distinction because we didn't
2 feel that there were any of any magnitude at all.

3 MR.LALONDE: Yes. Now, would you
4 mind referring to Recommendation No. 2 on page 4 where
5 you say: "A change in the present method of clearing
6 vessels for the Great Lakes be set up and a thorough
7 check of the vessel and of the qualifications of its
8 personnel."

9 THE WITNESS: Yes.

10 MR. LALONDE: Would you mind
11 specifying what change you would suggest and what
12 type of thorough check you would like to have?

13 THE WITNESS: Well, the centralizing
14 of the clearance at one port was what we had in mind
15 in view of the further recommendation for changes in
16 the B certificate.

17 MR. LALONDE: Is that the only
18 thing that you had in mind in paragraph 2, that you
19 wanted a check made at a single port?

20 THE WITNESS: That is correct. We
21 think it all should be done at one single port, what-
22 ever that first port of call should be.

23 MR. LALONDE: Is it your view that
24 under the present method of clearing vessels the check
25 takes place in several ports?

26 THE WITNESS: Frankly, I don't know
27 exactly where it takes place but our recommendation
28 is engendered by the fact we feel that the entire
29 thing should be done at once and a change should be
30 made in the B certificate so that when the check is



1 made it would be a thorough check taking that into
2 consideration. That is all I can say. The further
3 recommendation No. 3 has an effect on that. We
4 probably did not delineate our recommendations as
5 well as they should be.

6 MR. LALONDE: I understand you did
7 not go into more specific details as to what kind of
8 investigation should be carried on aboard the ship.

9 THE WITNESS: No, sir, because
10 this is something that I think people who are more
11 competent than we are should do.

12 MR. LALONDE: I understand that
13 you have not studied the present rules of inspection
14 of vessels.

15 THE WITNESS: I don't know enough
16 about it to answer any questions on it, no, sir. I
17 think Captain Cook may be familiar with it.

18 MR. LALONDE: What I had in mind
19 was in the preparation of this brief you did not do
20 any particular study of the present rules of inspec-
21 tion of vessels?

22 THE WITNESS: I would say it was
23 engendered by the idea of a change in the B certificate
24 and a reduction of pilotage in open waters.

25 MR. LALONDE: Would you please
26 refer to page 10 of your brief. You refer to ships
27 being delayed at Port Huron as long as 48 hours
28 because of a lack of pilots. Would you have specific
29 instances in that regard or is this rumour you have
30 heard?



1 THE WITNESS: Well, it is just like
2 this letter I read a few moments ago. This is infor-
3 mation that has been given to us. It is not some-
4 thing where I can testify as to its complete and
5 absolute accuracy because I did not see it. I
6 wasn't there.

7 MR. LALONDE: I understand then
8 that you did not check either whether it was specifica-
9 ly due to a lack of pilots in any specific instance,
10 for instance?

11 THE WITNESS: No, sir, I did not.

12 MR. LALONDE: You read from the
13 brief you submitted to the public hearings in Detroit
14 on April 13th and 14th?

15 THE WITNESS: Yes, sir.

16 MR. LALONDE: I think I heard you
17 state that the pilots had obtained copies of the
18 proposals as early as February 4th. Do you remember
19 having read that?

20 THE WITNESS: Yes, sir.

21 MR. LALONDE: To begin with, how
22 did you obtain that information and what pilots were
23 you referring to?

24 THE WITNESS: The information was
25 given to me by the manager of my Commerce Department
26 who was at the Detroit hearing -- and said he received
27 the information in discussions at the hearing.

28 MR. LALONDE: But you do not know
29 with whom, do you?

30 THE WITNESS: I don't know the



1 exact person with whom he discussed it, no.

2 MR. LALONDE: And are you a sub-
3 scribe to the Federal Register?

4 THE WITNESS: Yes, sir.

5 MR. LALONDE: And when did the
6 advertisement appear in the Federal Register?

7 THE WITNESS: The notification
8 appeared in the Federal Register dated March 19th.

9 MR. LALONDE: Thank you.

10 MR. BRISSET:

11 Q. Mr. Purdey, you are aware, are you
12 not that in the Canadian harbours of Toronto and
13 Hamilton the harbour commission employ pilots of
14 their own, who by the way are in competition with the
15 other pilots?

16 A. Yes, sir, I am aware of that, yes.

17 Q. Have any of the various port
18 authorities on the American side considered the possi-
19 bility of having their own pilots to expedite ship
20 movements in their respective harbours?

21 A. Not that I know of, no, sir.

22 Q. Are you aware that in fact this would
23 not be permitted under the present state of U. S. laws
24 on pilotage?

25 A. Well, to be perfectly honest about it,
26 sir, if I felt that pilotage was required in Toledo
27 harbour, if I felt strongly enough about it, I would
28 have a Bill introduced to change it.

29 We would do everything we could to
30 get that Bill seriously considered by Congress on the



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1 basis of port safety.

2 I think that in this particular
3 type of instance there would be an excellent chance
4 of having it accepted it as such because it would be
5 a Bill which only affected one locality.

6 This is in the interests of safety
7 and I am giving you a personal view this time. This
8 is not an Association's conclusion.

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1 Q. In other words, if you felt that
2 in your port in particular pilots were required for
3 safety or other reasons -- say, to expedite the move-
4 ment of the ships -- you would prefer to have these
5 pilots under your own authority; is that what you
6 wanted to convey?

7 A. What you asked me was whether or
8 not after I made a study if I concluded that this was
9 necessary for me to do, what would I do about it, and
10 I answered you that I think it would be very unlikely
11 that I would reach such a conclusion. I know that I
12 would never reach it in Toledo because of the ease of
13 navigation in the harbour, but in the first place I
14 think that I would have to examine to the satis-
15 faction of my local port the qualifications of the
16 pilots in the district. They are only in my port
17 to determine whether -- this would be a personal
18 opinion, of course, as to what I felt -- whether
19 there still remained an element of danger.

20 Q. Perhaps, Mr. Purdey, Toledo was a
21 bad example or is not a proper port to use as an
22 illustration. But let us speak in general and let
23 us assume that in one port the Authority comes to the
24 conclusion that there is a need for pilots, either
25 for safety reasons or to expedite the movement of
26 ships. What I would like you to give us your opinion
27 on, if you feel free to do so, is whether you would
28 advocate a system like the one that has been adopted
29 on the Canadian side in Toronto and Hamilton, where
30 the harbour authorities have their own pilots as their



1 own employees and under their jurisdiction to give
2 the required services to the ships?

3 A. I could not give you an answer to
4 that without making a pretty detailed study of a
5 comparable situation. I just could not do that
6 because I do not feel that I have enough information
7 to give a conclusion. Probably Captain Cook might
8 have an opinion, but I would have to have more infor-
9 mation than I have before I would arrive at a con-
10 clusion.

11 Q. Are you at all familiar, for instance,
12 with the situation in Detroit, which is within the
13 restricted waters, the pilotage waters of the Great
14 Lakes?

15 A. I am fairly familiar with it, yes,
16 sir.

17 Q. Are you aware that pilots, unless
18 they come on their ship there and remain there, have
19 to come from despatching ports quite a distance away
20 from Detroit in order to assist the ship that required
21 their services?

22 A. That is my understanding, sir, yes.

23 Q. Do you think this is a situation that
24 perhaps should be corrected?

25 A. I would certainly hope that there
26 would be some method found to ameliorate the cir-
27 cumstances that exist there. Normally you would
28 expect me to clap my hands in glee at the troubles
29 of a competitive port, but I do not do that. I do
30 not feel that way about it, because we have not sold



1 the Seaway yet and we need all the competition we can
2 get on the Seaway in order to sell it. So I would
3 say I sincerely hope that some method is found to
4 ameliorate the circumstances exhibited in this letter
5 from Mr. Fleming.

6 Q. Mr. Purdey, I would like to go
7 further into your recommendation No. 4 in the light
8 of the questions asked from you by counsel for the
9 Commission. You said there that as suggested by
10 the Shipping Federation of Canada some programmes
11 should be instituted to allow closer liaison between
12 members of the shipping interests and the United
13 States Great Lakes Pilotage Administration and the
14 Canadian Government?

15 A. Yes.

16 Q. It was pointed out to you that in
17 its own brief the Shipping Federation had also ad-
18 vocated a division of the pilotage areas of the
19 Great Lakes into spheres of control, either American
20 or Canadian depending upon the locality.

21 You appreciate, do you not, that
22 above Port Colborne -- that is, in Lake Erie in the
23 St. Clair and Detroit area and in Lake Michigan --
24 the most important ports are American ports?

25 A. Yes, sir.

26 Q. In the light of this would you not
27 agree that if pilotage matters in these lakes in these
28 areas were to a greater extent under the exclusive
29 control of the American authorities there would be a
30 better chance of obtaining closer liaison between your



1 Association and the pilotage authorities in the United
2 States than having to deal with two governments, even
3 though the Canadian government would have little
4 interest in the welfare of Detroit, Chicago and
5 Cleveland?

6 A. I think from a purely factual stand-
7 point the Canadian government does have a vital interest
8 in the welfare of those ports because the development
9 of the actual Seaway itself, the pace at which it
10 develops, is dependent upon the welfare of all of
11 the ports on the Seaway. So my immediate reaction to
12 this is that cooperation of both governments and
13 advisers is not too much to ask. I think that that
14 is a logical thing because each one in my opinion
15 has a vital interest in the overall growth.

16 Now I might have a little parochial
17 opinion in regard to the operation of Toledo. I
18 do everything I can to take cargo from Erie, Pennsyl-
19 vania, or take cargo from Detroit whenever I get the
20 opportunity. We put in special equipment like moveable
21 gantry cranes for heavy lifting so that I can take
22 cargo out of Cleveland. This is normal port com-
23 petition but on an overall basis -- and that is the
24 basis of this recommendation, sir -- I feel that co-
25 operation is definitely possible.

26 Q. I must say that I entirely agree
27 with you, Mr. Purdey, on a broad policy level. How-
28 ever I would like to go a little further into this
29 and ask you whether there would be a chance of
30 avoiding problems and disputes in matters of detail if



1 there were a division of the sphere of control between
2 American and Canadian authorities. To illustrate we
3 have a problem for instance in the harbour of Toronto.
4 If you have an American pilot serving there a ruling
5 will be made by the American Pilotage Authority on
6 matters of rates for instance which will differ when
7 it is a Canadian pilot who serves the same area. It
8 is in that respect that the Shipping Federation has
9 advocated separate spheres of control, so that you do
10 not have two sets of rules in one single port, for
11 instance. Would you at least agree to the suggestion
12 on that limited level?

13 A. I repeat what I said the other time
14 the question was asked me, and that is that it sounds
15 good without further investigation. I would
16 prefer not to be asked to commit myself. I would
17 rather investigate that in much more detail before
18 I would commit myself to answer. It is distinctly
19 possible that my colleague Captain Cook might have
20 some thoughts on the subject, but I would prefer not
21 to guess at this point.

22 Q. However, you certainly strongly
23 feel that on a broad policy level both governments
24 should cooperate fully together and with the shipping
25 interests to develop Seaway traffic?

26 A. Very definitely, yes, sir.

27 Q. And that should be the main objec-
28 tive even when pilotage is the matter in question?

29 A. Yes, sir.

30 MR. BRISSET: Thank you.



1 CROSS-EXAMINATION BY MR. LALONDE:

2
3 Q. Did you have maritime experience
4 yourself, Mr. Purdey?

5 A. Yes, sir. I served in the navy in
6 World War I.

7 Q. And did you serve on the Great Lakes
8 ships?

9 A. No, sir, I did not.

10 Q. Is it not a fact that to reach the
11 elevators at Toledo you have to cross something like
12 six bridges, I understand; is that correct?

13 A. Five of them.

14 Q. Five?

15 A. Yes, sir.

16 Q. And some of them, I do not know how
17 many, but you can tell me, are swing bridges?

18 A. There are three swing bridges, one
19 bascule and one fixed height.

20 Q. Is it not a fact that you get current
21 in the Maumee River when you reach the elevators?

22 A. Well, if you hit there during a
23 spring freshet you will, but other than that the average
24 is one mile an hour.

25 Q. I may be wrong but I am informed that
26 there are six bridges to reach the elevators. Are
27 you sure it is five and not six -- although I am not
28 going to argue very long over a bridge? Did you have
29 time to find out whether your opinion is five or six?

30 A. Maybe I figured that the 104-foot



1 clearance did not constitute a bridge; I do not know.

2 Q. I am instructed that this would
3 make No. 7. Anyway, we will go and see if neces-
4 sary.

5 Do you know how wide the channel is
6 to get to the elevators?

7 A. It is 400 feet.

8 Q. For how long -- for what distance?

9 A. From the mouth of the river to the
10 Anderson elevator is approximately six miles.

11 Q. Could you tell me what distance there
12 is from a point indicated as "R2 bell" at the entrance
13 of the channel to Toledo to the elevators?

14 THE CHAIRMAN: On Exhibit No. ---?

15 THE SECRETARY: No. 986A.

16 MR. LALONDE:

17 Q. I am informed that it would be
18 16 miles.

19 A. Sixteen miles is approximately correct,
20 yes, sir; but this is approximately nine miles on the
21 one reach from this point.

22 Q. "This point" will not appear on the
23 record. Point B indicated in green on the chart to
24 the entrance of the river it self. Is that
25 correct?

26 A. That is correct.

27 Q. How wide is that part which you have
28 indicated? Is that what you have indicated as
29 400 feet wide?

30 A. No, this has been widened out. This



1 is 500 feet now up the river from this point right
2 in front of the Port Authority docks, which are right
3 here inside to the north of the river. From that
4 point up the river it is 400 feet wide.

5 MR. LALONDE: Thank you.

6 RE-EXAMINATION BY MR. JACQUES:

7
8 Q. I have just some questions for pur-
9 poses of clarification. I think it is in evidence
10 that B certificates may be obtained from Montreal,
11 Toronto and the Lakehead -- these B certificates
12 are issued by the Government of Canada. Again with
13 respect to B certificates in your recommendation No. 3
14 you state that the regulations governing the issue
15 of B certificates be simplified. If I may, I would
16 read from the Great Lakes Pilotage Regulations and the
17 requirements for a B certificate are as follows, and
18 I quote from Section 7 of P.C. 1963.

19 "First the applicant must hold
20 a certificate or licence en-
21 titling him to act as master of
22 a steamship on foreign voyages
23 or a certificate of competency
24 as master of an inland waters
25 steamship or master of a home
26 trade steamship issued under
27 the Canada Shipping Act."

28 The second requirement is that he has within the next
29 preceding two years made at least two round voyages
30 into the waters for which he is to be deemed qualified.



1 That is, he may have gone already in Lake Ontario
2 but if he wants to proceed to Lake Michigan he has
3 to have two trips into Lake Michigan before he can
4 get the certificate.

5 The next requirement is a good
6 working knowledge of the Rules of the Road for the
7 Great Lakes; then, proficiency in the English language
8 sufficient for the use of the radio-telephone; and,
9 lastly, a knowledge of the practice of following separ-
10 ate course on the Great Lakes.

11 Which of these would you wish to
12 simplify?

13 A. The two-trip requirement.

14 Q. The two-trip requirement?

15 A. Yes.

16 Q. So we would, of course, keep the
17 provision that the master of a ship has to have a
18 certificate of some kind issued by his own country?

19 A. Yes; he should certainly be able to
20 navigate in open waters with it.

21 Q. And the proficiency in English --
22 well, I think you have mentioned that already. You
23 would retain it?

24 A. Yes.

25 Q. And knowledge of the practice of
26 following separate courses -- would you retain that?
27 Or perhaps this is out of your field.

28 A. I wouldn't get into that particular
29 detail at this moment. I would rather have you ask
30 Captain Cooke that.



1 Q. And if the Great Lakes Rules were
2 modified then the requirement of a good working know-
3 ledge of the Rules of the Road of the Great Lakes
4 would not longer be applicable since they might both
5 be the same?

6 A. That is correct.

7 Q. Now, when you were asked questions
8 with respect to spheres of influence and pilotage as
9 opposed to joint operation of the complete Great Lakes
10 Basin, what sort of investigation did you have in mind
11 when you said that you would have to make an investi-
12 gation before being able to answer the question?

13 A. I would have to personally examine
14 the administration of it to see how it works, to see
15 what these variances are; and there are people who
16 actually have made this type of investigation, who
17 are more competent than I am in the field, so I think
18 my entry into it on a study basis would be somewhat
19 redundant.

20 MR. JACQUES: Thank you.

21 THE CHAIRMAN: Mr. Lalonde?

22 MR. LALONDE: I hate to be contra-
23 dicted. I will find out whether you are right.

24 When you are going into Toledo
25 harbour you first cross the Detroit-Toledo railroad
26 bridge; is that right?

27 THE WITNESS: That is the Toledo
28 railroad terminal bridge, yes; that is a swing bridge.

29 MR. LALONDE: And then you have the
30 St. Louis railroad bridge; is that correct?



1 A. Yes; this is the Nickel Plate bridge.

2 Q. And then you have a bridge called
3 the Grand Avenue bridge?

4 A. No, that is the Detroit-Toledo
5 expressway.

6 Q. Yes; the Detroit-Toledo expressway?

7 A. The expressway bridge.

8 Q. And then you have a bridge over the
9 Pennsylvania railroad?

10 A. This bridge has been taken out.

11 Q. When was it taken out?

12 A. I don't know; but it hasn't been
13 there since I have been there.

14 Q. The bridge has not been there since
15 you have been there?

16 A. Yes.

17 Q. When were you there?

18 A. I went there on April 1st, 1960.

19 Q. Then you have the Cherry Street
20 bridge?

21 A. That is right.

22 Q. Then you have the high level bridge
23 that you referred to?

24 A. That is right.

25 Q. And then you have the New York
26 Central bridge?

27 A. That is right.

28 Q. Well, supposing that the Pennsylvania
29 Railroad bridge still exists that would make seven, and
30 if it doesn't it would make six?



1 A. Mm-hmm.

2 Q. Now, you have two elevators above
3 the New York Central bridge?

4 A. There are two elevators; and the
5 turning basis is above.

6 Q. Now, the clearance in the channel
7 which you have in Toledo is 25 feet 6 inches; is
8 that correct?

9 A. The actual dredging of the channel
10 was just completed and the dredging was down to 28
11 feet.

12 Q. When was that done?

13 A. It was completed just about two
14 months ago.

15 Q. And what is the deepest draught of
16 vessel that you get in Toledo -- fully loaded vessel?

17 A. The EDMUND FITZPATRICK from New
18 York with taconite, with 25,000 tons.

19 Q. And what draught?

20 A. Twenty-five feet six inches.

21 MR. LALONDE: Thank you.

22 THE CHAIRMAN: Mr. Purdey, you spoke
23 about delays at Detroit. What about Toledo? Do
24 you know anything about delays to ships awaiting pilots
25 there?

26 THE WITNESS: Sir, I have never
27 received a complaint from one of the captains, so I
28 have nothing to offer.

29 THE CHAIRMAN: Now, you mentioned
30 that you had made no study of port pilotage organization



1 and that if you made one today you think that it would
2 not be favourable -- that you would not be in favour
3 of such a system as at present. Is this because
4 you have a good service by the pilots now, or that
5 you want the service as it exists, or is it because
6 there is no necessity for pilots?

7 THE WITNESS: I don't believe that
8 there is any necessity for harbour pilotage in Toledo.

9 THE CHAIRMAN: Is this because no
10 pilots are required whatsoever, or no pilots in the
11 harbour?

12 THE WITNESS: No, sir.

13 THE CHAIRMAN: So no pilotage?

14 THE WITNESS: No pilotage.

15 THE CHAIRMAN: Now, in the brief at
16 pages 2 and 3 you state the reasons for the safety
17 measures and pilotage requirements. Now, what we have
18 now is that Admiral Richmond stated in 1958 that they
19 expected a great increase in volume of shipping.

20 THE WITNESS: Yes.

21 THE CHAIRMAN: And, because of this,
22 of course, hazards would be encountered, and so on?

23 THE WITNESS: Yes.

24 THE CHAIRMAN: And you say now that
25 this idea should be revised because the expeditions
26 were not reached, and you don't have the volume that
27 was expected; and so it is your wish to have a more
28 realistic approach with regard to safety, to be in
29 accordance with the present situation and not what
30 was expected?



1 THE WITNESS: Yes.

2 THE CHAIRMAN: That is putting it
3 in other words, but what you meant was that it is now
4 not necessary to have all these requirements and all
5 the safety measures with the record we have?

6 THE WITNESS: I believe, sir, that
7 the original layout of this was suggested by Admiral
8 Richmond and others upon the basis of the Corps of
9 Engineers' projection of vessel traffic. This pro-
10 jection of vessel traffic was projected into the
11 50 million-ton bracket per year, upon the basis of
12 the carriers being the same size as they were when
13 the study was made; therefore, it would be my sugges-
14 tion that a re-examination of this requirement would
15 be in order at this time in view of these statistical
16 reductions in the number of ships, but with the in-
17 crease in tonnage.

18 THE CHAIRMAN: Because you feel
19 that the regulations are too stern now and they should
20 be relaxed?

21 THE WITNESS: I think they should
22 be examined.

23 THE CHAIRMAN: On the basis of the
24 way it is now on the Seaway?

25 THE WITNESS: I think it causes a
26 deterrent in the rate of growth, which could be removed
27 with changes in the overall structure of things.

28 THE CHAIRMAN: Have you any further
29 questions, Mr. Lalonde?

30 MR. LALONDE: If I may.



1 MR. LALONDE:

2 Q. Mr. Purdey, Toledo is a very busy
3 harbour in the Great Lakes, isn't it?

4 A. Yes.

5 Q. Isn't it the busiest port in the
6 Great Lakes -- or maybe you would like it to be; I
7 don't know?

8 A. Well, we could say it both ways and
9 probably be correct both ways. The Corps of Engi-
10 neers reports that Toledo was the second largest
11 port on the Great Lakes in 1963, with a tonnage in
12 excess of 40 million tons. The port of Chicago is
13 listed as port No. 1, but I would suggest that if
14 you examined those figures you would find that for
15 the convenience of all of the ports in an
16 area were included; therefore, the steel mills in
17 Gary, Indiana, and Whiting, Indiana, were added to
18 the Chicago figure. Therefore, from that standpoint
19 Toledo is the largest single port on the Great Lakes.

20 Q. I also understand that there is a
21 fair amount of silting in the Maumee River taking
22 place; is that correct?

23 A. Yes, there is siltage in the river.
24 I think that a great portion of this has been caused
25 by the dredging activity in the river with the new
26 installations that have been going in on the river
27 each year.

28 You see, three of these grain ele-
29 vators are brand new grain elevators and each one of
30 them had to have a large amount of dredging done from



1 the channel to the berth. The Corps of Engineers put
2 its entire 27-foot channel into effect in the river
3 in the last four years -- one piece each year -- and
4 the constant agitation has caused a more rapid
5 siltation which has amounted to something in excess of
6 12 feet per year.

7 Q. I thought you said this was a 28-
8 foot channel. You have just said 27 . . .

9 A. It is a statutory 27-foot channel,
10 and in order to accomplish this when they first dredged
11 the channel they dredged actually down initially to
12 a depth of 29 feet; so that for the first year or two
13 you have it at 29 feet; the second year you have
14 28 feet in Toledo; and in the third year it is at
15 the statutory level. The fourth year requires main-
16 tenance dredging.

17 Q. You start again?

18 A. You have to start again; and this,
19 of course, has got to be done to accommodate the ships;
20 and this, of course, is something which we are hope-
21 ful we will be able to maintain.

22 Q. I understand, then, that you must
23 have dredges operating pretty regularly in the channel
24 and in the river?

25 A. Yes; there must be maintenance
26 dredging done in some segments of the river or other
27 each year.

28 Q. And do you get large lake ships
29 as well as deep sea ships in your harbour?

30 A. Yes, sir.



1 Q. Do you mean to say that you could
2 have, for instance, a deep sea ship -- let us take a
3 Greek ship, with an English-speaking master or radio
4 operator aboard, who has never been on the Great Lakes
5 -- you would feel that this Greek deep sea ship, which
6 has never been on the Great Lakes, should be left to
7 go alone to the Anderson elevator at the top of
8 Maumee River in Toledo, without being required at all
9 to use a pilot -- even if it is the first time this
10 ship has used your harbour? And would you feel that
11 it would be safe yourself?

12 A. Frankly, I don't see any reason
13 why he couldn't. You gave me a very difficult example,
14 of course.

15 Q. Yes; I did it on purpose; because
16 your statement was a very broad one; also, it was
17 pretty definite.

18 A. Yes. There isn't any reason why he
19 couldn't, frankly. I will admit that this would be
20 a borderline case.

21 MR. LALONDE: Thank you.

22 THE CHAIRMAN: Mr. Brisset?

23 MR. BRISSET: He might have to wait
24 for daylight, for instance?

25 THE WITNESS: Well, I don't know.
26 I have seen them come in with the benefit of a pilot
27 and I am my dock at quarter speed, and this has cost me
28 \$25,000; and this was with a pilot aboard; so I don't
29 know who is worse.
30



19071

1 THE CHAIRMAN: Have you any further
2 questions, Mr. Brisset?

3 MR. BRISSET: No, my lord.

4 THE CHAIRMAN: Then, we are going
5 to adjourn now for about ten minutes.

6

7 ---Short recess.

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1 ---Upon resuming.

2 MR. PURDEY: My lord, may I have
3 the permission of the Commission, sir, to correct an
4 erroneous statement that I made?

5 THE CHAIRMAN: Of course.

6 MR. PURDEY: The gentlemen were
7 correct in referring to the bridges. The bridge
8 which was taken out prior to my arrival was the Fawcett
9 Street bridge and the Pennsylvania Railroad bridge is
10 still there.

11 There is a total of seven bridges in
12 the harbour, as we just got through checking. Four
13 of them are railroad swing briges, two of them are
14 bascules and one is a high lift bridge. Thank
15 you for the privilege, sir.

16 MR. LALONDE: I agree with Mr. Purdey
17 but I am sorry if it cost me a trip to Toledo to check.

18 MR. JACQUES: I would like to have
19 Captain Cook now, please.

20 THE CHAIRMAN: We delayed today in
21 the recess because we have a calendar problem and on
22 the agenda. We are trying to find a solution in
23 order to keep busy every afternoon and not to make
24 people lose their time waiting here. We were trying
25 to fix that. We have no solution as yet.

26 CAPTAIN JOSEPH V. COOK, sworn

27
28 DIRECT EXAMINATION BY MR. JACQUES:

29 Q. Would you tell us your full name,
30 please?



ANGUS, STONEHOUSE & CO. LTD.
TORONTO, ONTARIO

Cook, dir
(Jacques)

19073

- 1 A. Joseph V. Cook.
- 2 Q. You are a master mariner?
- 3 A. Yes, master mariner, any ocean, any
- 4 tonnage.
- 5 Q. You have a U.S. certificate?
- 6 A. U.S. certificate.
- 7 Q. Granted when?
- 8 A. 1952.
- 9 Q. Did you ever sail in command of
- 10 vessels?
- 11 A. Sailed in command since 1952 to
- 12 1958.
- 13 Q. Six years?
- 14 A. Yes.
- 15 Q. In what ports of the world did you
- 16 trade?
- 17 A. As master in the U.S. coastal trade,
- 18 India trade, South America, African, and virtually
- 19 worldwide trade.
- 20 Q. Did you trade in the Great Lakes as
- 21 master?
- 22 A. I did not.
- 23 Q. What is your position with the
- 24 Muskegan Harbour Authority?
- 25 A. I am port director of the Port of
- 26 Muskegan, Michigan.
- 27 Q. You are a member of the pilotage
- 28 committee of the Association?
- 29 A. I am a member of the pilotage com-
- 30 mittee of the International Association of Great Lakes



1 Ports.

2 Q. With respect to recommendation No. 1
3 of your brief that we adopt as quickly as possible
4 the international Rules of the Road for application
5 within the Great Lakes, would you tell us why the
6 adoption of international rules should affect pilotage
7 in the Great Lakes?

8 A. Looking at ocean vessels, the masters
9 and officers of ocean vessels in worldwide trade are
10 completely familiar with the international rules of
11 the road and their application. If they enter another
12 waterway where there is any difference in the nature
13 of manoeuvring, this creates a potential hazard if
14 they are not aware of that rule and the
15 requirement for a pilot or adviser who is familiar,
16 or that some system be made practical that all officers
17 can be then examined in their proficiency under a
18 different set of rules where manoeuvring or signals
19 are different.

20 Q. Have you studied the Great Lakes
21 rules?

22 A. Yes, I am familiar with the ---

23 Q. Great Lakes rules?

24 A. Great Lakes rules.

25 Q. In your personal opinion as a master
26 mariner, do you think the differences between the
27 international rules and the Great Lakes rules are
28 such as to create hazards?

29 A. Yes, I do. Not -- well, a hazard --
30 I mean it would create confusion and by creating



1 confusion in a manoeuvring situation it creates a
2 definite hazard.

3 Q. It would create a definite hazard?

4 A. Yes.

5 Q. Have you studied the regulations as
6 a manner of issuing B certificates?

7 A. I am familiar with the requirements
8 for issuing B certificates.

9 Q. Do you think that the requirements
10 are such as to avoid the confusion which you mentioned
11 a while ago?

12 A. I don't believe that the two-trip
13 requirement gives any great direction in solving that
14 problem. I do not believe in the two-trip require-
15 ment at all for that matter.

16 Q. Why not?

17 A. The fact of making two trips into
18 the Great Lakes to my mind doesn't give a master any
19 more competency in navigating open waters comparable
20 to what exists in other areas of the world than he
21 had before he made the two trips.

22 Q. Do you think that an examination
23 on the Great Lakes rules would have more value?

24 A. I think if all the officers were
25 completely familiar with the Great Lakes rules and
26 their applicability in manoeuvring when they have
27 charts of the lakes and the rules of the Great Lakes
28 are available; if they were competent to operate
29 under those rules, the trip requirement seems to be
30 a little superfluous.



1 Q. You advocate the adoption of the
2 international rules within the Great Lakes. Would
3 you accept modifications of the Great Lakes rules so
4 that there would be more conformity with the inter-
5 national rules without importing the international
6 rules into the Great Lakes?

7 A. That is the only thing that the
8 international rules would be designed to cure, that
9 is the major differences between the two sets of
10 rules. Modification of the Great Lakes rules towards
11 the international rules would have the same effect.

12 Q. So long as the major differences
13 are eliminated?

14 A. So long as the major differences
15 are eliminated.

16 Q. Is that in particular reference to
17 manoeuvring signals?

18 A. Manoeuvring signals and -- principally
19 manoeuvring signals.

20 MR. JACQUES: That is all, thank
21 you.

22 MR. LALONDE:

23 Q. You state principally manoeuvring
24 signals. What else do you have in mind?

25 A. Well, in addition there are some of
26 the recognition lights that are peculiar to the Great
27 Lakes, like the anchor lights particularly, and cause
28 confusion if it is used by somebody who was familiar
29 with the international rules and not the Great Lakes
30 rules.



1 There are some other differences that
2 are not quite so apparent but as I have mentioned one
3 difference that could create confusion, could create
4 a hazardous situation.

5 MR. JACQUES: In order to clarify
6 the record, we note that in the U.S. there are also
7 inland rules. Is that correct?

8 A. Correct.

9 Q. Would you explain to us what these
10 inland rules of the road are?

11 A. Inland rules of the road are the
12 rules for manoeuvring vessels inside of certain
13 boundary lines that have been adopted by the U.S.
14 government. Inside of those lines the inland rules
15 apply.

16 Inland rules have been adopted along
17 the exact same line of the international rules with
18 several minor changes like reduction of the time
19 between fog signals which are practicable.

20 They also make provision for your
21 own lighting and at the same time permit the optional
22 use of ocean type lights in those waters.

23 Q. And are these rules applicable to
24 the Great Lakes?

25 A. International rules are applicable
26 on the high seas. Inland rules are only for those
27 designated waters but not west of Montreal on the
28 Great Lakes. There are a separate set of rules
29 that apply on the Great Lakes.

30 THE CHAIRMAN: You mean west of



1 Montreal to the lakes and to the Pacific coast?

2 THE WITNESS: These inland rules
3 apply on the Pacific coast.

4 THE CHAIRMAN: Inside what you call
5 the peck line?

6 THE WITNESS: Yes.

7 MR. LALONDE: Do you have different
8 inland rules in various parts of the U.S. or are they
9 applicable all over the United States?

10 THE WITNESS: The inland rules of
11 the road apply inland of the line that is specified
12 by the Congress running from Maine to the lower part
13 of Texas and the Gulf of Mexico, and from Mexico to
14 Seattle, Washington; inside of this line. This
15 includes up the Columbia River and up river not
16 specifically designated under the Western Rivers
17 rules; the inland rules apply.

18 MR. LALONDE: They are all the same.

19 THE WITNESS: They apply to the
20 Mississippi and to New Orleans.

21 THE CHAIRMAN: And their application
22 comes under the jurisdiction of the Coast Guard?

23 THE WITNESS: It comes under the
24 jurisdiction of the Coast Guard.

25 MR. BRISSET: Captain, what about
26 the Western River rules; since we are speaking of all
27 these rules, where would they apply?

28 A. They apply just to those named
29 rivers named in the rules, the Red River and some of
30 the navigable inland rivers. Only where it is defined



1 in the rule itself do the rules apply.

2 MR. BRISSET: They are also alike
3 for all the Western Rivers named in that particular
4 piece of legislation or regulation?

5 A. Yes.

6 MR. BRISSET: Now, captain, would
7 you agree with me that there is another perhaps major
8 change in the Great Lakes rules contained in the pro-
9 posal of the U.S. Coast Guard; namely that whereas
10 under the international rules of the road, in narrow
11 channels each ship must keep to the starboard hand
12 of the channel, whereas in the Great Lakes rules
13 two ships, having to meet in a narrow channel, the
14 downbound ship will have the right to elect which
15 side the meeting is going to be effected?

16 A. Yes.

17 Q. Would you consider that to be also
18 somewhat of a major change in the Great Lakes rules
19 of the road?

20 A. Now, under the Coast Guard proposal
21 they propose to retain the right in any area in
22 restricted waters, where practice dictates, of
23 departure from the rules in the proposed new rules.
24 This could and is done quite frequently even under
25 the inland rules set up by special bylaw. Rules
26 for certain specific areas where currents or other
27 natural features require departure from the inland
28 rules. This has been acceptable and can apply in
29 some situations.

30 Q. In other words, under the proposal



1 the areas where the normal rules will not apply will
2 be clearly indicated while it is not at the moment?

3 A. Yes.

4 MR. JACQUES:

5 Q. You have had considerable experience
6 as a master of vessels plying all over the world.
7 Surely you have had occasion to enter a port where
8 you have never been before when you were a master?

9 A. That is right.

10 Q. You take pilots?

11 A. I do, yes, if they were available.

12 Q. Notwithstanding the fact that you
13 take on a pilot, did you before entering the port
14 seek out information with respect to that port?

15 A. Certainly. This is standard
16 procedure. The pilot in every case is an adviser
17 to the master of the vessel, not in command of the
18 vessel by any stretch of the imagination. The
19 master is still responsible for the operation of a
20 ship and it is quite obvious that any master will get
21 all the information available through the various
22 publications that are available to determine exactly
23 what he has to meet in any port he is proposing to
24 go into.

25 Q. So you never went into a port cold,
26 as it were, not going into any port ---

27 A. No, I didn't.

28 Q. You had charts?

29 A. Yes, charts. Charts are available
30 for virtually every port in the world.



1 Q. And you ensured that your charts
2 were correct and up-to-date?

3 A. We receive, of course, Notice to
4 Mariners of any correctness and charts are kept up
5 to date as normal shipboard procedure.

6 Q. When you were out to sea you did not
7 receive Notices to Mariners? Did you have any way
8 to obtain information relative to a port which you
9 intended to enter?

10 A. Normally there was not any major
11 change in any ports between the time you had infor-
12 mation available at the point of departure and at the
13 time of arrival, that would not be quite visible when
14 you approached the port.

15 The major factors in that case would
16 be moveable pieces of equipment that are in use in
17 the harbour area.

18 Q. When you were master, I imagine you
19 had occasion to sail in narrow waters where there
20 were dredges and what not?

21 A. Quite frequently.

22 Q. It is not unusual?

23 A. It is not unusual.

24 MR. JACQUES: Thank you.

25 MR. LALONDE:

26 Q. You have been trading in the main
27 ports of the world, I understand?

28 A. That is correct.

29 Q. Connected with the high seas. Can
30 you tell me what great port you went to, as a rule,



1 without taking a pilot?

2 A. Into the port itself?

3 Q. Yes.

4 A. No. I stated that I was accustomed
5 to taking a port pilot but not necessarily pilots in
6 restricted waters around the world.

7 Q. I was talking about ports.

8 A. In ports, yes.

9 Q. You always took a pilot as a prac-
10 tice?

11 A. Yes.

12 Q. Have you ever been in the world in
13 a port which would compare, let us say, to Toledo?
14 Would you say Southampton or Le Harve compared to
15 Toledo; roughly? I know no two ports are alike in
16 the world but just roughly.

17 A. Roughly, Le Harve could be considered
18 comparable.

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30



1 Q. Did you ever enter a harbour
2 without taking a pilot?

3 A. A number of times, yes, I did.

4 Q. How far did you go?

5 A. Just into the harbour itself. I
6 never went up the river without a pilot.

7 Q. For the record, when you say "into
8 the harbour itself" it is the part which is directly
9 leading on the sea?

10 A. Yes.

11 MR. LALONDE: Thank you.

12 COMMISSIONER SMITH: Captain Cook,
13 what do you consider the primary reason for pilotage --
14 safety, manoeuvreability, convenience or some other
15 reason?

16 THE WITNESS: The primary reason is
17 for expediting the vessel. You take a pilot to ad-
18 vise you of the best and the fastest method of carrying
19 out a manoeuvre, or often in an area which you are
20 not familiar with when you are not sure you can do
21 this yourself. The pilot is a safety factor in a
22 manner of speaking, but his primary purpose is to
23 expedite the operations of the vessel.

24 COMMISSIONER SMITH: Thank you,
25 Captain Cook.

26 THE CHAIRMAN: Are there any further
27 questions of the Captain?

28 Thank you very much, Captain.

29 ---Witness withdrew.
30



1 THE CHAIRMAN: Mr. Colvin, would
2 you like to address the Commission?

3 MR. COLVIN: I have nothing to add,
4 my lord. The Canadian members of our Association
5 have all made individual representations and I do not
6 think there is anything further from the Association
7 point of view that I can add on their behalf.

8 THE CHAIRMAN: Thank you very much,
9 and I wish to thank you very much also for giving us
10 another angle of the problem and making us aware of
11 the problems and difficulties with regard to the
12 American ports with railways, and so on, and of
13 course the Seaway. This is a new angle for us and
14 we thank you very much for the good recommendations you
15 gave us.

16 MR. PURDEY: Thank you.

17 THE CHAIRMAN: I was telling you
18 before that we have a problem of agenda. Every day
19 this week we had something on the agenda. Tomorrow
20 is the Department of Labour; the day after is the
21 National Harbours Board, and on the 1st it was the
22 Department of Transport, and on the 2nd was the
23 Canadian Merchant Service Guild. Except for the
24 Canadian Merchant Service Guild the other parties will
25 not take the full day and we would have problems of
26 not having anything to do in the afternoon. For
27 the Department of Transport Captain Slocombe will be
28 available to answer a few questions on general problems
29 in the river this afternoon and Mr. McGillivray could
30 possibly be available tomorrow. He is busy today



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1 with another matter and cannot attend today. We hope
2 that he will be available tomorrow afternoon, but he
3 may only be available the day after tomorrow. It
4 would suit us much better, of course, if it could
5 be tomorrow afternoon after the Department of Labour.

6 Then on the 30th we will have the
7 National Harbours Board; also there is a newcomer,
8 the Canadian Marine National Employees' Association.
9 They were supposed to be heard on the first day. They
10 will come on Wednesday afternoon and Thursday.

11 We have a request for a postponement
12 on the part of the Canadian Merchant Service Guild.
13 The reason given for that request -- and Mr. Langlois
14 can add to what I say if I do not give all the reasons
15 -- the main reason is that it will take more than one
16 day. They expected before, we were told before when
17 it was placed at their request on the 2nd October, that
18 it would not last more than one day. Now apparently
19 it develops after making the brief that it is going
20 to take more than one day, which means all their
21 witnesses would have to be called back again on the
22 19th, making twice the expense.

23 Also there is a possibility of
24 rebuttal to the Imperial Oil evidence. If it were
25 only that, of course, the rebuttal could come on the
26 19th and it would not necessitate the calling of all
27 the other witnesses. Also the brief is going to be
28 in your hands only on Thursday and you will have very
29 little time to study it. Of course, we knew about
30 that and we know that it is against our rules of



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1 procedure and it should have been in our hands long
2 before. But those are things that happen.

3 In any event this is the situation.
4 We have not decided as yet as to whether it should
5 be postponed, but we would not like to have you waiting
6 here for a day and a half without doing anything. We
7 will look into the matter at recess and let you know
8 this afternoon.

9 This afternoon we shall proceed with
10 the Department of Transport and whatever we can dispose
11 of of the questions that are before them. It is
12 no use continuing this morning because the Department
13 of Transport do not have their file here, so we will
14 adjourn now.

15 Yes, Mr. Lalonde?

16 MR. LALONDE: My lord, is there any
17 brief of the Canadian Maritime Association?

18 THE CHAIRMAN: Yes, Wednesday after-
19 noon.

20 MR. LALONDE: Is there any brief?

21 THE SECRETARY: Yes, the brief has
22 just come into the court room -- a very timely question.

23 THE CHAIRMAN: Do you have any re-
24 marks, Mr. Langlois? Would you like to make any
25 comments on what I said?

26 MR. LANGLOIS: No, my lord; I am quite
27 satisfied.

28 THE CHAIRMAN: So we will now adjourn
29 until two-thirty this afternoon.

30 ---Luncheon adjournment.



1 ---UPON RESUMING AT 2:30 P.M.

2 MR. LALONDE: Before Captain Jones
3 starts, Mr. Chairman, before my friend starts his
4 examination of Captain Jones, I would like to raise a
5 point in connection with Exhibit 1282, which is a copy
6 of Chart 2400, filed by counsel for the Shipping
7 Federation, in which certain areas have been indicated
8 as proposed to be served by Canadian pilots and other
9 areas indicated as proposed to be served by American
10 pilots.

11 There is attached to that
12 Exhibit a supplementary letter which reads, in the
13 second paragraph:

14 "The areas to be served by American
15 pilots and, therefore, to be within the
16 American sphere of operations, have been
17 marked in blue ink, while those to be
18 served by Canadian pilots, and therefore
19 to be within the Canadian sphere of
20 operations, are marked in red ink.

21 Only pilotage waters are
22 involved in this scheme and it is the
23 recommendation of the Shipping Federation
24 that pilotage on the open water should be
25 abolished."

26 Now, keeping this in mind, and
27 the recommendation of the Shipping Federation, we have
28 the St. Clair River and the Detroit River indicated in
29 blue, as well as the Sault Ste. Marie area, and the
30 area of little currents. We also have a few harbours.



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1 I will not mention all of them. But I notice that
2 while the Port of Oswego has been inserted the Ports
3 of Bay City and Saginaw, which is the same thing, have
4 not been indicated in blue, and I would like to know
5 from my friend whether this is just a port which has
6 been forgotten, or if it is a port about which the
7 Shipping Federation considers that no pilotage is
8 necessary, while in Oswego pilotage is necessary. I
9 was wondering if there was any reason for leaving out
10 Bay City, because I am informed that Bay City is a
11 more important harbour than Oswego.

12 Maybe my friend would like to
13 consider this.

14 MR. BRISSET: I think we have explained
15 what was meant by the blue and red marks in the Exhibit
16 in relation to ports in the accompanying letter, where
17 we stated that at the present time the traffic in
18 some of the ports, that are either marked or unmarked
19 on the chart, was not sufficient that pilotage services
20 were warranted, but if, in the future, these services
21 became warranted because of an increase in traffic,
22 then the pilotage services at these ports would come
23 either within the Canadian sphere of influence or the
24 American sphere of influence, depending upon their
25 actual location.

26 In the case of Bay City, which
27 would be on the American side, it is intended, of course,
28 that wherever needed the pilotage services would be
29 rendered by American pilots. The same applies to all
30 the areas within Lake Huron and Lake Michigan in respect



1 of ports on the American side.

2 MR. LALONDE: My point is that Oswego
3 and Rochester have been indicated as ports where
4 pilotage would be done, and I am instructed that Bay
5 City is at least as important if not more important,
6 than Oswego.

7 MR. BRISSET: The markings on Lake
8 Ontario were not intended to indicate the necessity
9 for pilots. It was to indicate that if pilotage
10 became necessary at the ports of Oswego and Rochester
11 in the future, because of the traffic, these ports
12 would be served by American pilots up until such time
13 as they became warranted to be served by Canadian
14 pilots, on any occasion on which a ship might require
15 a pilot in these ports.

16 Before we proceed with the
17 further examination of Captain Slocombe, I would like,
18 if I may, to put two or three questions to Captain
19 Jones in connection with the statistics of pilotage
20 in various Districts, which were put before the
21 Commission last week.

22 THE CHAIRMAN: Before you do that will
23 you allow me to make two remarks?

24 First, with regard to the
25 agenda, we have discussed this with all concerned, and
26 we have agreed that in view of the circumstances -- in
27 view of the expectation that the presentation of the
28 Merchant Service Guild could last more than one day, and
29 the fact that they have witnesses who are coming from
30 all over the country, we might as well postpone them



1 until the 19th; but on the 19th they will come second
2 after the Lake Superior Pilotage Association Cooperative,
3 to whom we have given a firm date for the 19th in the
4 morning; so they will come after that.

5 I think that the Association's
6 presentation will last about half a day. Do you think
7 that is about right, Mr. Lalonde?

8 MR. LALONDE: It depends how many
9 questions my friends have, I think.

10 THE CHAIRMAN: But not more than a day
11 anyway?

12 MR. LALONDE: Oh, no.

13 THE CHAIRMAN: Well, in any event, we
14 will take whatever time you would like to have.

15 Now in the week of the 19th
16 should we see that we could finish all the evidence
17 in that week we will try to do it, even if it means
18 longer hours and even Saturday morning.

19 This week I think we can finish
20 on Wednesday night. I think that all we have
21 remaining could be finished by Wednesday night. If not
22 we will finish Thursday morning. But I think we will
23 finish on Wednesday night.

24 The second matter is that we
25 have received from Captain Maurice Koenig a new brief,
26 and it is rather really pleadings. We have also
27 received a telegram today: "Please see that Mr. Jacques
28 and Mr. Lalonde be given English version of my latest..."
29 That is why I have read it; and now we are going to
30 file it right away.



---EXHIBIT NO. 1352: Second brief of Captain Maurice Koenig, Quebec pilot.

MR. LALONDE: Is there a difference between the English and the French versions?

MR. JACQUES: There is no French version. It is only an English version.

THE CHAIRMAN: That is the telegram, and the version I have here is an English version anyway. So as we have done with all the briefs we have received so far, those who want copies of it are going to receive it.

All right, Mr. Brisset.

CAPTAIN D.R. JONES, Recalled, Sworn

CROSS-EXAMINATION BY MR. BRISSET (Continued):

Q. Captain Jones, I have placed before you Exhibit 590, which is a statement issued by the Quebec Superintendent of Pilots showing the gross earnings of each pilot within the District in the year 1959, the amount of his gross earnings deposited in pension funds and the amount of the net earnings of each pilot, generally, if I may use that expression.

As you are probably aware, similar statements were filed for the other St. John's River District, namely, Montreal River and Montreal Harbour.

A. Yes.

Q. My question is that I understand this type of statement was discontinued after the year 1959, and I would like to know what was the reason for



1 the discontinuance of the preparation each year of this
2 type of statement?

3 A. With the information contained
4 in the source forms being placed on a punch card, it
5 was possible, upon short notice, to obtain information
6 of this sort, or further amplified information, and
7 for that reason it was decided at that time that there
8 would be no point in preparing this in this form,
9 and statements of this kind, upon request, could be
10 provided on request.

11 Q. Captain, correct me if I am
12 wrong, but during the course of the evidence given
13 here, the preparation of the statement showing the
14 pilots' earnings, we were left under the impression
15 that there was a certain reluctance on the part of
16 the corporations and the Department of Transport to
17 give information showing what had been, in any one
18 year, the gross earnings of a pilot in any one District.
19 Is this a false impression, or not?

20 A. So far as my knowledge goes
21 it is a completely false impression. There has never
22 been any thought of that.

23 May I add that it seemed to
24 some other, and myself included, that there really
25 wasn't very great value in determining each individual
26 pilot's earnings in as much as the earnings of any
27 individual fluctuated, depending upon the size and
28 the number of ships that he actually worked, and, in
29 the last analysis, this money is divided on some
30 equitable basis, which, as you are aware, is largely done



1 by the associations concerned; and in the Department's
2 list these are the average earnings figures, and
3 usually the word "average" is a little on the
4 arithmetical side rather than in any other sense. This
5 is the figure that is listed; and, as an example, a
6 Class A pilot may well earn more than a Class B pilot
7 and a Class B pilot more than Grade C pilots, but the
8 Department produces an arithmetical average and it
9 discards the fact that there are grades of this type.
10 We well know that for this reason some pilots actually
11 receive more cash and make a larger contribution and
12 others less; and certainly the work performed,
13 expressed in money terms, by an individual pilot, as
14 indicated by his source forms, certainly fluctuates
15 widely from this average figure, and it is because of
16 this wide fluctuation that it doesn't lend itself to
17 much significance in the statistical sense.

18 MR. LALONDE: May I say, on behalf of
19 the pilots, that that was our impression, and that there
20 was no reluctance on the part of the pilots to give
21 the information, but they didn't even have this
22 information so they didn't know what their gross
23 earnings were.

24 THE WITNESS: Perhaps I should add that
25 I am not aware that the Shipping Federation or any other
26 organization which is properly concerned with this
27 matter ever asked for the figures. If they had asked
28 for them I feel sure that the Department would have
29 acceded to their request.

30 MR. BRISSET: Q. You are aware that in



1 the District of Quebec, to use that District as an
2 illustration, the earnings of the pilots are paid to
3 the pilots individually by other associations of the
4 pilots in that District?

5 A. Yes; after the deduction for
6 the contribution to pension fund.

7 Q. Has it ever occurred to the
8 Department, when remitting to the associations the
9 total of the net fees earned in a year -- has it ever
10 occurred to the Department to advise, at the same time,
11 each pilot of the District what was the amount so
12 paid into his association? For instance, let me take
13 pilot #1 in the District, which is on the sheet which
14 is Exhibit 590. His gross earnings were \$16,438.24
15 for pilotage for movages, 772; the amount paid to the
16 pension fund on his behalf, \$1,204.72; and the net
17 sum, which I assume was paid over to the association was
18 \$16,005.52. As I say, has it ever occurred to the
19 Department, in remitting to the association, to send
20 a statement to this pilot saying: "This year your
21 gross earnings have been \$16,438.22 in fees paid; what
22 went into the pilotage pension fund was \$1,204.72; and
23 we have remitted to your association \$16,005.52"?

24 A. We have never received a request
25 for this sort of information to be furnished to each
26 pilot. If we had received such a request our clerks
27 might have grumbled about the additional work, but there
28 certainly would be no principle and no policy against
29 acceding to their request. I cannot speak for my
30 superiors, but I certainly wouldn't think there would be



1 a serious objection to giving this information.

2 Q. Would you not think that this
3 procedure would be advisable in view of the fact that
4 the by-laws state that pilotage dues must be paid to the
5 pilots; so that at least they should be told how much
6 is paid on their behalf to his association?

7 A. Well, possibly we were a little
8 remiss in not doing it without prompting. I must be
9 frank. We didn't do so and no one thought we should,
10 that it is a highly desirable thing to do, but as
11 I said before, I can only repeat that if this infor-
12 mation were requested, I am quite sure it would be
13 forthcoming.

14 MR. BRISSET: Thank you.

15 MR. LALONDE: Captain, you may sit down
16 if you wish. There is in evidence that document,
17 referred to as Exhibit 590, was sent to the Shipping
18 Federation on a yearly basis before 1958. Were you in
19 the Department at that time?

20 THE WITNESS: Yes, sir. I think this
21 statement is correct. I think that was so done.

22 MR. LALONDE: Was the statement sent
23 automatically to the Shipping Federation or was there
24 a subsequent request for it?

25 THE WITNESS: I just can't remember. I
26 am not sure.

27 MR. LALONDE: Can you find out in
28 checking your file?

29 THE WITNESS: Yes, we can do that.

30 MR. LALONDE: Also we have in evidence



1 that the pilot's association never received a copy
2 of such statements. Was there any particular reason
3 why they were not sent to the pilots?

4 THE WITNESS: None, I am sure. None to
5 my knowledge and I think my knowledge is reliable.

6 MR. LALONDE: I would like to refer you
7 to documents which have been filed before this Commis-
8 sion much earlier. We were informed at the time that
9 these were documents prepared in Ottawa. I refer you
10 in particular to Exhibit 526, entitled "Pilotage,
11 Montreal River District, Earnings and Work Load for
12 Pilots, 1963, 1962 and 1961". Would you know whether
13 such documents were prepared in your Branch?

14 THE WITNESS: Oh, yes, it would be
15 prepared in our Branch.

16 MR. LALONDE: Does the same apply to
17 Exhibit 527?

18 THE WITNESS: Yes, this would also be
19 prepared in Pilotage.

20 MR. LALONDE: Now, Captain, if I were
21 to ask you what your work load is, what would you answer?

22 THE WITNESS: Work load of --

23 MR. LALONDE: Yours?

24 THE WITNESS: My own personal work load?

25 MR. LALONDE: Yes?

26 THE WITNESS: I would answer "Too much",
27 probably, but in terms of hours it is the customary
28 Civil Service number of hours, speaking seriously. Well,
29 customarily 8:30 to 5:00 and so many days a week, so
30 many hours a month and so on.



1 MR. LALONDE: From 8:30 to 5:00, five
2 days a week?

3 THE WITNESS: Yes.

4 MR. LALONDE: That is what you would
5 answer?

6 THE WITNESS: Yes.

7 MR. LALONDE: Now, would you tell me
8 whether the information contained in Exhibit 527
9 entitled "Average Daily Work Load for Each of Nine
10 Months", appearing in Exhibit 527, was prepared under
11 your instructions?

12 THE WITNESS: Yes, it was prepared under
13 my instructions.

14 MR. LALONDE: Now, do you know what is
15 represented here as the average daily work load for
16 each of nine pilots (sic)?

17 THE WITNESS: This would be the number
18 of hours on assignment in one form or another divided
19 by the period concerned, presumably nine months as
20 stated here.

21 MR. LALONDE: That is, you have divided
22 the average work load for each of nine months into
23 a daily work load?

24 THE WITNESS: I don't think this is
25 right here, is it? For example, it speaks of the
26 average work load for each of nine months so April is
27 693 hours for the District concerned, which is
28 Montreal Harbour.

29 MR. LALONDE: Yes.

30 THE WITNESS: So that really is the work



1 load. This is the work in aggregate performed by the
2 16 pilots in 1963 -- yes -- that were there -- that
3 were on strength, I presume, without looking -- yes,
4 this is for 16 pilots.

5 MR. LALONDE: So what would appear here
6 as the average work load based on --

7 THE WITNESS: On nine months would be --
8 what really is listed here is the actual work load for
9 each of the following nine months. April 693.4, May, and
10 so on.

11 MR. LALONDE: The average daily work
12 load for each of nine months?

13 THE WITNESS: Well, this is a subdivision
14 of 693, the relevant monthly total, divided by the
15 number of days in that month which, as you can see, it
16 is for April, for example --

17 MR. LALONDE: Is it fair to say this
18 daily work load would be calculated from the figure
19 at the top of page 2 of Exhibit 527, called "Average
20 Hours Worked per Day, Actual Piloting, per Effective
21 Pilot"?

22 THE WITNESS: I would say it was the
23 other way around, that this total here --

24 MR. LALONDE: Excuse me, for the record
25 what you mean by "this" --

26 THE WITNESS: This total of 23.1 hours
27 of average daily work load would divide into 2.8 hours
28 per pilot.

29 MR. LALONDE: Per effective pilot?

30 THE WITNESS: Per effective pilot.



1 MR. LALONDE: Actually piloting?

2 THE WITNESS: Yes, actually when I say
3 daily actual piloting we are using "piloting" in the
4 widest sense of the word, performing a pilot's work;
5 not merely going to work on a vessel -- taking in
6 detention or whatever it is.

7 MR. LALONDE: Being on the bridge?

8 THE WITNESS: On duty.

9 MR. LALONDE: "On duty" is a pretty broad
10 statement which will lead to argument.

11 THE WITNESS: Yes. I am using it in the
12 broadest sense possible.

13 MR. LALONDE: Being on board ship?

14 THE WITNESS: Yes, and on time as is
15 stated in this resource form.

16 THE CHAIRMAN: From the ordered time
17 til?

18 THE WITNESS: The time of dismissal.

19 THE CHAIRMAN: The time of dismissal?

20 THE WITNESS: Yes.

21 MR. LALONDE: Disembarking time?

22 THE WITNESS: Yes.

23 MR. LALONDE: We were getting the average
24 hours worked per day, actually piloting per effective
25 time.

26 THE WITNESS: Yes, per effective pilot
27 as indicated on sheet 1 here, which is given as 16,
28 for example.

29 MR. LALONDE: I will not take the time
30 to review each District, but it is substantially that



1 same basis which was used when you refer to daily work
2 load?

3 THE WITNESS: Yes.

4 MR. JACQUES: Time where there is money
5 involved?

6 THE WITNESS: Essentially this is what
7 it is, yes.

8 THE CHAIRMAN: Well, this may be true
9 or this may not be true. It all depends which District
10 you mean. For example, order time would mean nothing
11 as far as money was concerned with regard to Quebec
12 because there is no detention.

13 THE WITNESS: No, sir, but in these
14 cases it is not aboard ship -- if he is aboard ship --
15 I believe in some instances pilots are to be -- in
16 essence he doesn't start his time on duty until he gets
17 on board such ship. For example, the ship passing
18 through the Quebec District proceeding upwards from
19 Montreal, he may well be ordered at nine and the
20 vessel does not go til nine-thirty. Nine-thirty is the
21 time of commencement for the purposes of computing --

22 THE CHAIRMAN: Not the ordered time?

23 THE WITNESS: No, sir, not in that time.

24 THE CHAIRMAN: In other Districts which
25 you have taken --

26 THE WITNESS: Yes, it may very well be
27 proper time included. I mean, if he is ordered to a
28 ship or a vessel at nine o'clock and he goes aboard
29 at nine and the vessel sails at seven, he is on retention
30 and paid in one form or another for this lapse of three



1 hours; the first hour being free in some Districts, and
2 so on.

3 MR. LALONDE: And is it fair to state
4 that the Minister, when he made a declaration in the
5 House on April 5th, 1962 and declared, for instance,
6 that in Montreal Harbour the net individual income
7 amounted to just over \$11,000.00 for an average working
8 day of 3.1 hours, he had the same basic figures and
9 the same basic concept as that to which you refer?

10 THE WITNESS: Yes, sir. I say this on
11 the basis that these figures went from our documents,
12 from our statement, which they were. Therefore they
13 have the same bases as elsewhere.

14 MR. LALONDE: The same for other Districts
15 to which the Minister referred in that speech?

16 THE WITNESS: Yes.

17 MR. LALONDE: Would you say, after
18 reflection, that this is a pretty misleading way of
19 saying things?

20 THE WITNESS: No, sir, I wouldn't say
21 that at all.

22 MR. LALONDE: You wouldn't say that, and
23 would you not agree that the ordinary citizen, reading
24 this, would be led to conclude that pilots were working
25 three hours a day?

26 THE WITNESS: I presume they would. This
27 is the reading.

28 MR. LALONDE: If the Minister states that
29 the working day is 3.1 hours, the ordinary citizen
30 is right in concluding that pilots in that particular



1 District are working three hours a day?

2 THE WITNESS: This is right.

3 MR. LALONDE: And you would say that
4 this statement and this interpretation would be a
5 fair statement or interpretation of what the work load
6 of the pilot in that District is?

7 THE WITNESS: I think it would be quite
8 logical, yes.

9 MR. LALONDE: I am asking you whether
10 it would be a fair statement of the work load?

11 THE WITNESS: I take it you are
12 suggesting that we should make some allowance for
13 travelling? Is that it?

14 MR. LALONDE: Don't ask me questions.
15 You are in the box.

16 THE WITNESS: I think this is a perfectly
17 fair inference. It states on the face of it what it
18 is and this is what must follow. This is the amount --
19 the daily average amount of time worked by a pilot
20 in that particular District.

21 THE CHAIRMAN: And normally the
22 conclusion to be taken, if we take for granted what was
23 just said, is that the strength should be decreased
24 and they should work at least six hours per day?

25 THE WITNESS: I think that with respect
26 to travelling, if there is a great deal of travelling,
27 larger than customarily experienced in our society,
28 then some adjustment has to be made. In fact, we do
29 naturally record this fact. We are aware that a pilot
30 may work five hours a day and in some Districts -- in a



1 good number of Districts -- there is almost as much
2 or equal amount of travelling. This is taken into
3 account when we decide whether there are more pilots
4 needed or less.

5 MR. LALONDE: I am not referring here
6 to the negotiations between the experts of the Department
7 of Transport and the experts of the Shipping Federation
8 and the experts for the pilots as to what should be
9 the actual strength of pilots or the number of pilots.
10 What I am referring to now is the view of the ordinary
11 citizen taking cognizance of these various statements
12 which bear an official imprint, if I may say, in the
13 same way as when I asked you what your work load is
14 and you said it was 8:30 to 5:00.

15 THE WITNESS: I didn't add --

16 MR. LALONDE: But the ordinary citizen
17 hearing that pilots are working three hours a day
18 would be led to conclude in effect this is the
19 equivalent of a pilot working from 8:30 in the morning
20 until 11:30 in the morning, as far as you are concerned?

21 THE WITNESS: What is sauce for the
22 goose is sauce for the gander. I didn't add that I
23 spend about three hours travelling every day to go home
24 and back. This is the same thing and this is primarily--

25 MR. LALONDE: How many hours travelling?

26 THE WITNESS: An hour and a half in the
27 morning and an hour and a half in the evening.

28 MR. LALONDE: Where do you live, Montreal?

29 THE WITNESS: Well, it doesn't take me
30 personally as long as this, but in my office my steno-



grapher lives in Middnick and it takes her something like that and we make no allowance for that whatsoever. The stenographer has still got to be in the office by 8:30 and she doesn't leave until 5:00.

To say that you ignore the fact that this is not using computing the number of pilots required on strength, this is to ignore the primary purpose of the figure for this is precisely what it is used for.

MR. LALONDE: To what are you referring?

THE WITNESS: Referring to the work load. Very obviously we use this to determine how many pilots are needed and, of course.

MR. LALONDE: You state you use obviously travelling time and the work is --

THE WITNESS: No. What I said was bearing in mind would you not produce statistics on this travelling time? If we were to do this it would have to be done on an arbitrary basis because it is very difficult to get reliable figures otherwise.

MR. LALONDE: Is it a fact that there is nothing in your form which provides that type of information to be inserted?

THE WITNESS: That is right.

MR. LALONDE: In effect you do not have that information?

THE WITNESS: No.

MR. LALONDE: And never asked for it formally?

THE WITNESS: No. We have made inquiries.



1 We have made -- unless we know how much -- for example --
2 we have consulted the B.C. pilots whose travelling is
3 a very diverse type. Therefore we are not able to
4 make a reasonable conjecture on it and they tell us that
5 their average travelling time is nearly 100% of their
6 piloting time.

7 In other words, they pilot for
8 $5\frac{1}{2}$ hours a day and they travel for $5\frac{1}{2}$ hours per day.
9 This is perfectly plausible and credible. For example,
10 we know that in St. John and Halifax and those places
11 much the same situation prevails. In other words, if
12 they go on piloting, there is a period of one hour
13 that you may say they were travelling. We are aware
14 of this.



1 Q. I see, and as far as the
2 Quebec District, District 1, is concerned, what is
3 your estimate or idea of the concept of what "travelling
4 time" would be?

5 A. In the pilotage District in
6 Quebec it is a rather different feature.

7 Q. I know; that is why I asked the
8 question.

9 A. Yes, well, they have to travel
10 down from one end of the District to the other in
11 the spring and in the fall -- at least in December --
12 and we have looked into this and we find certainly
13 the average number of occasions on which a pilot will
14 do this is much smaller than one would have at first
15 thought. Ten times might be quite a representative
16 figure of this travelling. Other than that there is,
17 of course, travelling from their home to the pilotage
18 station in Quebec or conversely from the hotel to the
19 wharf at Escoumains.

20 This is travelling of a rather
21 different type. It is quite questionable whether this
22 would be accounted as full travelling in exactly the
23 same way as it would be objected to in any other. When
24 people speak of travelling they frequently mean portal
25 to portal travelling.

26 Q. I notice you never took into
27 account travelling to and from Port Alfred, for instance?

28 A. I did not do it but I am aware
29 of it.

30 Q. You are aware that ships sail



1 from Port Alfred?

2 A. Yes. I am also aware of how
3 long it takes, but I did not mention it at the moment.

4 Q. I would like to go to another
5 subject, and that is in connection with your official
6 capacity, your official title. You are Superintendent
7 of Pilotage?

8 A. Pilotage.

9 Q. Would you tell me what are
10 your terms of reference so far as the exercise of
11 your functions is concerned?

12 A. Well, when I was first
13 appointed to this position I was given a list of
14 duties, and this is really my official terms of
15 reference and my appointed duties.

16 Q. Do you have that document?

17 A. Well, I have not it available
18 here but we do have a copy in head office.

19 Q. Would you mind bringing that
20 document forward on the next occasion?

21 A. Certainly.

22 THE SECRETARY: Could we give it a
23 number now?

24 ---EXHIBIT NO. 1353: Duties of the Superintendent of
25 Pilotage, Department of Transport,
Ottawa.

26 MR. LALONDE: Q. Now you remember what
27 these duties were?

28 A. Oh, in general, yes.

29 Q. My question is as follows: Are
30 there duties which are delegated to you to the extent



1 that you can yourself make the final decision on them
2 without having to refer your decision to your
3 superiors or get it approved by your superiors?

4 A. Well, the demarcation between
5 these is a matter of judgment and of necessity is
6 couched in general terms. For this reason on borderline
7 cases, as in all organizations, one has to exercise
8 judgment in deciding whether they are within your
9 ambit or not. But one might say that operational
10 matters -- and here again we come down to definitions --
11 are very largely left up to myself, unless they involve
12 policy, and here, of course, they have to be submitted
13 to senior officials, senior officers of mine. Purely
14 the junior functions and the operational functions are
15 left to myself and my subordinates.

16 But I must confess that we are
17 a unit. We do not function as disparate individuals.
18 It is a pretty closely knit organization and each
19 official knows pretty well what his superiors, certainly
20 what is immediate superiors and his immediate sub-
21 ordinates are doing. It is very intimate from moment
22 to moment.

23 MR. JACQUES: Would that be applicable
24 to Mr. Cumyn also?

25 THE WITNESS: Well, I cannot speak for
26 Mr. Cumyn, as you well understand. But I keep in the
27 closest contact with Captain Slocombe, my immediate
28 superior, and also to a slightly lesser degree with
29 the Director. Similarly, below I keep in very close
30 contact with my immediate assistant, Captain Seeley, and



1 slightly less with the people below, junior to him.

2 As I said, it is quite closely
3 knit and we confer with each other very often verbally,
4 so that one might say the hiatus in the file is not
5 in fact a hiatus in intelligence. This matter referred
6 to may well have been discussed in very great detail.

7 MR. LALONDE: Q. Would it be fair to
8 state that 90% of the decisions you have to make are
9 referred to for approval to your superiors?

10 A. Well, 90% is a difficult term.

11 Q. The decisions might be letters
12 you have to send out making recommendations or
13 suggestions or expressing an opinion on what the
14 Department's view is on a pilotage matter?

15 A. Yes. If I ever either infer
16 or state expressly the Department's view I have to be
17 most careful, as is very appropriate.

18 Q. I am not speaking about the
19 appropriateness; I am just asking what is the fact.

20 A. This springs from the fact that
21 inevitably if it is a contentious matter it will be
22 taken up on a higher level because if there are no
23 other reasons, for that reason alone it is incumbent
24 upon us to see to it that our basis is well founded and
25 for this reason the real answer to your question is
26 probably Yes.

27 Q. I submit to you that I take
28 it for granted that 100% of the contentious matters are
29 submitted to your superiors for approval?

30 A. Yes.



1 Q. I was rather asking a more
2 general question including what would appear to be the
3 non-contentious aspects?

4 A. This is a rather qualitative
5 question and I can only answer qualitatively. By and
6 large, to be quite frank, I would be inclined to
7 agree and say Yes. But here again one has to be a
8 little flexible.

9 Q. I submit that the percentage
10 would even be greater as far as your own subordinates
11 towards you?

12 A. Yes. I must confess that as
13 is possible I keep them under close surveillance. This
14 brings up the nice question of delegation of duties,
15 but we cannot have a dissertation on this subject here.

16 THE CHAIRMAN: Thank you, Captain.

17 MR. LALONDE: Thank you, Captain.

18 ---Witness withdrew.

19 -----

20 CAPTAIN F. S. SLOCOMBE, Sworn

21 DIRECT EXAMINATION BY MR. JACQUES:

22 Q. Captain, I believe that when
23 we left off your examination before and we heard Mr.
24 McGillivray, we had reached question number 13. If we
25 may now move to questions numbers 14 and 15, with
26 reference to a so-called inter-departmental committee....
27 This is the section concerning inquiries into casualties
28 and the reference in Exhibit 1291 is number 7.

29 A. My Lord, I referred to the
30 evidence on this. It was Captain Matheson's evidence in



1 Montreal, I think. I am not sure what Captain Matheson
2 was talking about, what he meant, what he was referring
3 to. I spoke to him at lunchtime there and perhaps he
4 meant intra-departmental, within the Department, and
5 what he was referring to was just our group of
6 officials from Ottawa, which was not a committee in
7 this sense at all.

8 He refers to Mr. Cumyn and the
9 conversation he had with Mr. Cumyn and myself and
10 Captain Jones and Captain Gendron. We are not a
11 committee; we are merely the officials who are
12 required to express opinions on these things upon
13 request. So I really think that there is not such
14 a thing as this committee to which Captain Matheson
15 referred.

16 Q. I am advised that in some
17 correspondence emanating from the Department there
18 was reference to that committee?

19 A. Well, Mr. Jacques, I do not
20 know what it was, unless it was what Mr. Cumyn may
21 have referred to as his "pilotage team". But as I say,
22 there was no -- I can state this categorically; there
23 was no such committee set up.

24 Q. Question number 16 refers to
25 the "local pilotage committee". I believe that the
26 subject is pretty near exhausted now. We have dealt
27 with that committee several times.

28 A. Yes; I do not think I have
29 anything to add to that.

30 Q. Question number 17: This question



1 is directed to the Department on behalf of counsel for
2 Canadian Merchant Service Guild. You might recall this
3 came up in Montreal and he had requested that the
4 minutes be filed.

5 A. Now minutes? I have here a
6 copy of the report of the local pilotage committee, which
7 I will file. It is a report signed by Captain J. J.
8 Gendron as Chairman of the local pilotage committee.

9 MR. JACQUES: My Lord, I should like to
10 file this document as Exhibit 1354 -- the report of the
11 local pilotage committee meeting with reference to
12 the casualty to SS. JOHN E. F. MISENER, dated March
13 3rd, 1960.

14 Q. Was there an inquiry following
15 the report of this committee?

16 A. Yes, there was a formal
17 investigation and I have here a copy of the report
18 of the Commissioner, Mr. Justice Arthur I. Smith in
19 that formal investigation.

20 MR. JACQUES: I should like to file
21 this document, My Lord. Perhaps we could annex it to
22 the previous Exhibit?

23 THE CHAIRMAN: Right.

24 ---EXHIBIT NO 1354: Report of local pilotage committee
25 meeting re casualty to SS JOHN
26 E. F. MISENER, dated March 3rd,
27 1960, together with report of the
28 formal investigation into the
grounding of the SS JOHN E. F.
MISENER on Lark Reef, P.Q. on
November 6th, 1959.

29 Q. If we may come back to the
30 first questions with respect to inquiries, I wonder if



1 you are able to answer question number 9 as to why
2 this Captain Gendron directed not to express any
3 opinions or recommendations on casualties as of May,
4 1963?

5 A. As I explained before, My Lord,
6 it was a suggestion on my part that it would be
7 better if each individual officer reviewing these
8 cases did not make a recommendation at the end of it.
9 It would be better for us to get together, those of
10 us who were available, and come up with a consensus
11 instead of a number of individual recommendations which
12 might be different, each one looking at the case or
13 studying the case from the point of view of his own
14 experience. It would be better for us to pool our
15 experiences and to have a recommendation as from the
16 Nautical Division. I take it that this is what Captain
17 Gendron meant.

18 MR. JACQUES: Could be.

19 Now, My Lord, I have no further
20 questions to direct to the witness with respect to
21 inquiries into casualties. However, Mr. Ron McGillivray,
22 counsel for the Department, will be available again
23 to continue his discussion of the procedure followed.

24 THE CHAIRMAN: Yes. Mr. McGillivray
25 will be here tomorrow or the day after tomorrow.

26 THE WITNESS: He will know late this
27 afternoon, My Lord, if he will be available tomorrow
28 afternoon or the next afternoon.

29 THE CHAIRMAN: I understand also that the
30 Canadian Marine Nautical Employees' Association will not



1 now go on, so if it does not, Mr. McGillivray will be
2 available either tomorrow afternoon or Wednesday
3 afternoon.

4 THE WITNESS: He said he thought he
5 would be available either tomorrow afternoon or
6 Wednesday afternoon and he will know later this
7 afternoon.



1 THE CHAIRMAN: So I take it that you
2 would expect to finish the evidence regarding the
3 investigation procedure late on Wednesday; although
4 I would prefer, of course, that it would be tomorrow?

5 MR. JACQUES: I am now...

6 MR. LALONDE: Excuse me. While we are
7 one this inquiry into casualties I have a question or
8 two to ask in connection with Exhibit 866, which has
9 been filed as a list of casualties, which was
10 completed later on.

11 I don't know whether Captain
12 Slocombe is in a position to make a statement in
13 connection with accidents.

14 This is a list of casualties
15 where no pilots were involved, for the various Pilotage
16 Districts in Canada, as well as a list where pilots were
17 involved in the Churchill Pilotage District.

18 Now, Captain, do you know how
19 you obtained the information when there was a casualty
20 when no pilot was involved? How did you obtain that
21 information, so far as Exhibit 866 is concerned?

22 THE WITNESS: If it was a British vessel
23 we would have the statutory wreck report form --
24 casualty report -- which any Master of any British ship
25 is required to make to the Customs House.

26 MR. LALONDE: Required by law to make?

27 THE WITNESS: Yes. Occasionally a foreign
28 Master also makes this report. Perhaps the Customs
29 Officer to whom he goes for customs clearance and so on
30 is aware that he has been in a casualty and asks him to



1 make it; but we can't require them to put in a report.

2 May I confer with Captain Jones
3 on this, and may we look at that Exhibit, Mr. Lalonde?

4 MR. LALONDE: Yes.

5 ---AT THIS STAGE CAPTAIN SLOCOMBE CONSULTED WITH CAPTAIN
6 JONES.

7 THE WITNESS: I think, Mr. Lalonde, that
8 is the only answer I can give you if there is no pilot
9 involved; this list is compiled from wreck report
10 forms.

11 MR. LALONDE: And those wreck report
12 forms would be compulsory in the case of British ships
13 but in the case of other ships you have no means of
14 ascertaining whether the report was made or not?

15 THE WITNESS: This is correct.

16 MR. LALONDE: This is correct?

17 THE WITNESS: Yes. Our practice is that
18 we watch the newspapers and Lloyd's report and so on,
19 and when our clerk, who is responsible for this, sees a
20 report of a casualty, she looks at our records and if
21 the Department has not received the wreck report and it
22 is a British ship then we send out a form which is a
23 sort of reminder to the owners or the agents, to ask
24 them to get this form deposited.

25 MR. LALONDE: And if the ship is not a
26 British ship what do you do? Do you insert it, or do
27 you leave it out since you have no means of requiring
28 the information by law?

29 THE WITNESS: This is right. We don't
30 really take cognizance of casualties to foreign ships



1 unless a pilot is on board, and then we have to from
2 the pilot's angle.

3 MR. LALONDE: So that, in effect, the
4 Exhibit filed as Exhibit 866 cannot be interpreted by
5 any means as being a full statement as to casualties
6 when no pilot is involved?

7 THE WITNESS: You are quite correct.

8 MR. JACQUES: It was mentioned quite some
9 time ago before the Commission that they were by no means
10 complete reports of all casualties and that they were
11 merely as ascertained from the Department's files in
12 Ottawa.

13 MR. LALONDE: Yes; but we have to know
14 what the Department's files contain.

15 MR. JACQUES: There was also explained
16 the necessity of filing wreck report forms by British
17 ships.

18 MR. LALONDE: Now then, for 1962 I notice
19 that you have now the TEAK BAY, November 10. I
20 remember when the first part of this evidence was
21 adduced in Montreal the TEAK BAY was not in and there
22 was a big argument between myself and, I think, Captain
23 Bodensick of C.S.L. who did not know that this ship
24 had ever grounded. Do you know how you got the
25 information finally, because it was not on this list
26 in Montreal as I remember asking a question about it?

27 THE WITNESS: I assume, of course, that
28 if the matter came up from any source we would write
29 the C.S.L. and ask to have this -- that we had learned
30 that there was a casualty; that it had not been reported;



1 and would they please send in a report.

2 MR. LALONDE: By the way, where there
3 any changes in the recording of these reports between
4 1959 and 1960? Were there any important changes in the
5 law or in the procedure as to reporting those casualties?

6 THE WITNESS: No. Perhaps it would be
7 a bit better because we knew of them. Unfortunately,
8 many of the ships, particularly the lakers -- they don't
9 remember that they should report the small casualties.
10 There is the question here as to the line between a
11 casualty that is worth reporting and one that isn't.
12 Unfortunately, this is not laid out in our law. We
13 are hoping to have something on this; but at present
14 it says: "Casualty". If a laker bumps a wall and
15 makes a little dent in herself is this a casualty
16 worth reporting to the Department? It is a question.

17 MR. LALONDE: I am asking the question
18 because I am rather surprised to see the number of
19 casualties in 1958 and 1959 in the St. Lawrence-Kingston-
20 Ottawa District, whereas in the 1960, for instance, in
21 the Kingston District, you have only one reported
22 incident, and in 1962 only one; and in 1961 in Cornwall
23 Pilotage District, you have five and one in 1962. There
24 is a very sudden difference between 1958-59 and after-
25 wards. Did you ever investigate this matter to find
26 out what was the reason?

27 THE WITNESS: No.

28 THE CHAIRMAN: You don't mean that there
29 should be constant accidents?

30 MR. LALONDE: No; but I suspect, My Lord,



1 that there is a certain law of averages which should be
2 maintained somehow. I am quite willing to accept some
3 variations from year to year, but going from roughly
4 20 to 1 suddenly....

5 MR. JACQUES: But you forget that District
6 No. 1 was set up then!

7 MR. LALONDE: These are accidents in-
8 volving no pilots.

9 MR. JACQUES: The Seaway was opened. In
10 1958 accidents were before the Seaway.

11 MR. LALONDE: Yes; but 1959 was when
12 the Seaway was opened, and in 1958 and 1959 we have
13 pretty well the same amount of casualties, and then
14 suddenly they cease.

15 THE WITNESS: I quite agree with you,
16 Mr. Lalonde; I would like to ask some questions about
17 this. I didn't see that.

18 THE CHAIRMAN: Perhaps it was a new
19 clerk reading the papers!

20 MR. LALONDE: Well, you have informed
21 me that you are going to check on that. For your
22 guidance, in 1961, on April 16th, on Lake St. Louise,
23 you had a ship called COTEAU d'OC that had a casualty
24 and it is not on this list. In the same year the
25 SASKATOON, below the Seaway International Bridge on
26 the north side, had a casualty; and in 1959 the
27 NEW QUEDOC near Whiskey Shoal. It is not important.
28 I am just mentioning these three incidents which you
29 may check.

30 MR. BRISSET: If I might contribute



1 something to this discussion, there is another Article
2 in the Shipping Act, Article 652, which makes it
3 obligatory on all Canadian ships and all ships carrying
4 passengers between places in Canada to report accidents.

5 THE WITNESS: Yes; this is a requirement
6 on the Canadian ships; but I am afraid that it does
7 appear that some of them don't report, and unless we
8 send out a form to request the report we don't get it.

9 Perhaps we should clamp down on this
10 and start taking these people to Court and imposing some
11 fines. But I would like first to have a change in the
12 law so that it will only be a casualty if it involves
13 damage over a certain amount that would be required to
14 be reported.

15 THE CHAIRMAN: Or loss of life?

16 THE WITNESS: I would doubt very much
17 if one with loss of life could get away without putting
18 in a report. But ships are touching the walls all the
19 time in the Great Lakes trade and there is nothing
20 hanging on it usually; it is a matter between the
21 Master and his owners. He has failed, perhaps by lack
22 of skill, to prevent his ship being damaged, but this
23 merely reacts to his detriment in his relations with
24 his owners.

25 I don't know whether the word
26 "casualty" in the Act was intended to cover this kind
27 of thing.

28 THE CHAIRMAN: It is not defined in the
29 Act?

30 THE WITNESS: No. It is defined, but it



1 includes everything with damage.

2 MR. LANGLOIS: If I may be permitted to
3 come back on question 17, respecting the meeting of the
4 local pilotage committee in the case of the JOHN E. F.
5 MISENER, in studying Exhibit 1354, which is the report
6 of the local pilotage committee, there seems to be an
7 apparent contradiction between the text and the
8 evidence adduced in Montreal in connection with this
9 report, and I would like to ask Captain Slocombe this:
10 You are aware that this question was brought forward
11 after a statement by counsel for the pilots that he
12 had not been permitted to be present at this meeting
13 while the ship owners and their counsel were present.
14 I was wondering if it appeared from the file, when the
15 pilot retired, according to this report, which persons
16 remained present to discuss the sentence?

17 It says here at the beginning
18 of the report that Mr. Lalonde and Mr. Keating were
19 present, and a little farther down it says that the
20 pilot retired when the Committee was acquainted with
21 the facts of the case. I was wondering if, from your
22 file, you could determine who was present during
23 this...

24 THE WITNESS: I don't think we will have
25 anything else but that. That is Captain Gendron's
26 report.

27 MR. LANGLOIS: But you wouldn't have any
28 record as to who retired with the pilot?

29 THE WITNESS: No, nothing except what is
30 in there.



1 MR. LANGLOIS: There is nothing in here
2 that is apparent.

3 THE WITNESS: But I am sure that if
4 Mr. Langlois said that he or Mr. Lalonde were not
5 present this is not going to be disputed.

6 MR. LANGLOIS: I wouldn't dispute it
7 either.

8 COMMISSIONER SMITH: What is the
9 practice in the circumstances related by Mr. Langlois?

10 THE WITNESS: I think it would be, Mr.
11 Smith, that only the members of the Committee would
12 be present for the discussion of what they had heard.
13 Now, maybe this is not good, but I imagine that that
14 was the case.

15 I think that if I were
16 Chairman of such a Committee I would feel that this
17 was a matter for the Committee to discuss without
18 getting involved in further argument. The argument
19 should have been completed before the Committee was
20 left alone.

21 THE CHAIRMAN: Yes; this would be most
22 suitable.

23 Are there any other questions?

24 ---NO RESPONSE.

25 THE CHAIRMAN: We will adjourn for a
26 few minutes.

27 ---SHORT RECESS.

28

29

30



1 ---UPON RESUMING

2 MR. JACQUES: There was a gathering of
3 counsel and pilots looking over the casualty lists
4 which have been filed as Exhibit 866 and comparing
5 that with the casualty list filed by the Seaway
6 Authority, Exhibit 473, and in the year 1962 in the
7 Cornwall District the Exhibit supplied by the Department
8 shows one casualty whilst the Exhibit supplied by the
9 Seaway Authority shows six or eight of them.

10 MR. LALONDE: Well, some of them are
11 pilots.

12 MR. JACQUES: My figure of eight is
13 roughly exact, My Lord.

14 THE CHAIRMAN: With or without pilots?

15 MR. JACQUES: Without pilots, My Lord,
16 so we shall have to check carefully the Exhibits and
17 find out if they are not complete and if not they
18 should be complete.

19 THE CHAIRMAN: We shall study both of
20 them to try to find out about that.

21 MR. JACQUES: I was speaking particularly
22 for the record so when we read the record our attention
23 is drawn to the discrepancy.

24 THE CHAIRMAN: As a matter of policy,
25 does the Seaway Authority report when there is a
26 casualty to the Department of Transport?

27 THE WITNESS: No, My Lord, not exactly,
28 unless they have some complaint to make against a
29 pilot.

30 THE CHAIRMAN: There is no liaison



1 reporting in casualties?

2 THE WITNESS: No. As I said, we would
3 not be concerned about this kind of casualty, if you
4 like to call it that, which is common in lakers where
5 they are making docks all the time and they may damage
6 a plate. If there is no pilot involved, this is a
7 matter between the Master and his owners.

8 THE CHAIRMAN: This is all the definition
9 of what is a "casualty"?

10 THE WITNESS: Yes, sir.

11 MR. LALONDE: I submit, My Lord, that
12 on this list provided by the Seaway Authority, there
13 were pretty substantial casualties involved.

14 MR. JACQUES: One of them was a collision,
15 as a matter of fact.

16 THE WITNESS: That should have been on
17 our list.

18 MR. JACQUES: And the description of a
19 casualty in the Shipping Act in Section 551 is pretty
20 broad.

21 THE WITNESS: It includes everything,
22 if a ship is damaged. This is right.

23 MR. JACQUES: Yes, and "when any ship is
24 lost, abandoned, stranded or damaged".

25 THE WITNESS: I still wonder if the
26 intention of the law-makers in that respect was intended
27 to include a little touching of a lock or a lock wall
28 or approaching a wall when a vessel comes alongside.
29 It hardly has any public impact.

30 MR. JACQUES: It could be there is a legal



1 de minimis non curat praetor.

2 DIRECT EXAMINATION BY MR. JACQUES:

3 Q. Now, My Lord, if we may move
4 on to the series of additional question, index number 8
5 and Exhibit 1291. I wonder, Captain, which of these
6 questions you are ready to answer now?

7 A. Well, may I just go through
8 each one and I will say whether I am able to answer
9 them?

10 Q. Yes, please.

11 A. Number 1. The difference between
12 the DOT Navigation School and the Marine Institute at
13 Rimouski.

14 The DOT Navigation Schools were
15 often called cramming schools. They were schools for
16 the preparation of candidates for examination and the
17 Department had schools at Yarmouth, Halifax, St. John,
18 New Brunswick at one time, and Quebec and B.C., I
19 think; but in any case the Department has not any now;
20 but the difference between this school and the Marine
21 Institute at Rimouski was that the Rimouski school
22 included a pre-sea training school for young men, boys,
23 who intended to make the sea their career, but the
24 Department did not have any school of this kind except
25 for one they had during the war for the manning pool,
26 which was a month's training.

27 Q. Tell me, today the Department
28 no longer has any navigation schools?

29 A. No.

30 Q. Except the one at Point Edward?



1 A. That has not been opened yet.

2 Q. No, but apart from that one?

3 A. Yes, and Prince Rupert. We
4 do have a class at Prince Rupert which we assist. This
5 is provincial too, I am sorry. Our man at Prince
6 Rupert does act as a teacher.

7 THE CHAIRMAN: What are the schools at
8 Halifax, Quebec and Toronto?

9 THE WITNESS: They are all provincial
10 schools, My Lord. Remember, the provincial authorities
11 -- with a subsidy from the Federal Department of Labour,
12 the Vocational Training Branch --

13 THE CHAIRMAN: And this is where we saw
14 lately in the newspaper that there was a radar simulator
15 in Halifax functioning now?

16 THE WITNESS: This is the same, My Lord,
17 as was in Toronto, and the one at Halifax is a little
18 later than the one at Toronto, and Captain Morrison,
19 as it says in this press report, set up or assisted in
20 setting up each of the schools. He trained the nucleus
21 of instructors here in simulators after taking a course
22 in England.

23 There was in Halifax a similar
24 school set up to the one in Toronto. There were
25 certain things that Captain Morrison felt it was lacking
26 and when these items were supplied then the Department
27 gave its blessing to the school, its approval to the
28 school.

29 THE CHAIRMAN: It is still a provincial
30 school?



1 THE WITNESS: It is still a provincial
2 school and running in conjunction with the Vocational
3 Training Branch of the Department of Labour of the
4 Federal Department of Labour and run with the assistance
5 or advice of the Nautical Division under Captain
6 Morrison.

7 COMMISSIONER SMITH: Captain, there was
8 one interesting thing in that newspaper clipping, as
9 I recall it. The Masters and others who took this
10 radar-electronics course, which had been added to
11 the syllabus, after they qualified there was some
12 endorsement made on their tickets and I was wondering
13 what your opinion would be to have pilots taking this
14 course and having some endorsement on their licences,
15 that they had qualified in this electronics-radar
16 course?

17 THE WITNESS: We do have this in mind
18 already, Mr. Smith. It is open to the pilots, of
19 course, or to anybody now on a voluntary basis. There
20 is a problem as to whether or not we will require
21 this of men who already hold licences. We do have it
22 in mind that any new licences might have this as a
23 requirement.

24 COMMISSIONER SMITH: That is what I
25 was thinking about, not the present holders but future
26 holders that are issued licences.

27 THE WITNESS: We have this very strongly
28 in mind, Mr. Smith, and this would, of course, require
29 an amendment to the by-laws of each District.

30 MR. JACQUES: Since reference was made to



1 a newspaper clipping, I think it should be filed as
2 an Exhibit, which will be Exhibit 1355, an extract from
3 the Chronicle Herald of the 23-9-64.

4 THE SECRETARY: Halifax.

5 MR. JACQUES: Halifax.

6 ---EXHIBIT NO. 1355: Extract from the Halifax Chronicle
7 Herald of 23/9/64.

8 THE WITNESS: You are aware, My Lord,
9 this is the Captain Morrison who gave evidence in
10 Montreal about radar on shipboard?

11 THE CHAIRMAN: You just mentioned there
12 a problem as to whether the Authority can oblige
13 licensed pilots to gain further qualifications?

14 THE WITNESS: Yes, My Lord.

15 THE CHAIRMAN: Is it a problem to you
16 or is a certainty that you can or cannot?

17 THE WITNESS: No, we foresee there might
18 be difficulties in some Districts.

19 THE CHAIRMAN: You do not consider that
20 you have the right to oblige them to take, let us say,
21 a radar course or, let us say, we have in a few years
22 a new device altogether and that you may oblige them
23 to get acquainted with it and failing them doing so
24 they might lose their licence?

25 THE WITNESS: I don't know, My Lord,
26 we have not come to this point yet.

27 MR. JACQUES: Q. I believe your answer
28 covers the question with respect to the Toronto Navi-
29 gation School; but has the Quebec school been closed?
30 I presume your answer is "Yes"?



1 A. As far as our Department is
2 concerned, but there is a school there which is run
3 by the Provincial Department of Education. You need to
4 know the name of the instructor?

5 THE CHAIRMAN: So it is not closed. It
6 is still going?

7 THE WITNESS: There is a school still
8 there, My Lord.

9 MR. JACQUES: Q. But it is a provincial
10 school?

11 A. Yes. We, as a Department, have
12 no schools as such now run from our appropriation.

13 Q. With respect to the last section
14 of the question: Did you receive the Koenig memo
15 to the Department of Youth for Quebec dated 12 October,
16 1963?

17 A. I don't recall it myself. I
18 asked at lunchtime and there was nobody whom I asked
19 who remembered it either.

20 THE CHAIRMAN: Have you checked your
21 files as to whether this memo was in your files, dealing
22 with Quebec schools?

23 THE WITNESS: It has to do with Quebec
24 schools?

25 THE CHAIRMAN: That is right.

26 THE WITNESS: There was no request for
27 this to be done.

28 THE CHAIRMAN: Would you check?

29 THE WITNESS: Yes.

30 MR. LALONDE: My Lord, is my friend going



1 to file that particular memo?

2 MR. JACQUES: I think it has been filed
3 already, My Lord.

4 THE CHAIRMAN: It was sent to the
5 Commission?

6 MR. JACQUES: We will check on that. The
7 intention is to file it, if it has not been filed.

8 THE CHAIRMAN: This was sent to the
9 Commission for information. That is why the question
10 was put there, so if it is not filed, it is going to
11 be filed.

12 MR. JACQUES: I am advised it has not
13 been filed but it will be filed and we might as well
14 give it a number right now. It will be Exhibit 1356,
15 a copy of Koenig's memo to the Department of Youth
16 for Quebec dated 12th October, 1963.

17 ---EXHIBIT NO. 1356: Copy of Koenig's memo to the
18 Department of Youth for Quebec
dated 12th October, 1963.

19 MR. JACQUES: Q. While we are talking
20 about schools would you tell us of the latest develop-
21 ment with respect to the establishment of a training
22 college for new marine officers for the Canadian Coast
23 Guard?

24 A. I have no information on that.

25 Q. You have not?

26 A. No.

27 MR. LALONDE: Could you tell us under
28 whose responsibility the school at Point Edward comes?

29 THE WITNESS: This would be under Mr.
30 Stead, the Assistant Deputy Minister of Marine.



1 MR. LALONDE: There is a separate branch
2 and would it come under a separate branch of the
3 Department?

4 THE WITNESS: This would be the Coast
5 Guard which is under Marine Operations.

6 MR. LALONDE: Who is responsible for
7 the Coast Guard?

8 THE WITNESS: Well, the Director of
9 Marine Operations is Mr. Storrs.

10 MR. JACQUES: Q. The next question is
11 question number 2, the history of the policies with
12 respect to the deductions of operating expenses from
13 pilotage revenue and reasons for its changes, file
14 all relevant P.C.'s.

15 A. I don't know just how far back
16 you are going in this but there were no provisions
17 previous to 1950 for operating expenses to be paid
18 otherwise than from pilotage revenue. There was no
19 Order-In-Council necessary for this. It was just the
20 by-laws of the District provided for the payment out
21 of the pilotage fund and the respective pilotage funds
22 of all expenses of the District, but in 1950, as has
23 already been described many times, there was an Order-
24 In-Council which provided for the payment of all
25 expenses of operating and maintenance of pilot boats
26 and acquisition of pilot boats for the Districts named
27 in the Order-In-Council which were Halifax, Sydney, and
28 St. John, New Brunswick and British Columbia.

29 Q. And New Westminster?

30 A. Not then in 1950. New Westminster



1 and St. John's, Newfoundland were added later. These
2 have already been filed.

3 Q. Would you have similar Treasury
4 Board minutes with respect to the operating expenses
5 of the stations?

6 A. Yes, the stations are included
7 in that one.

8 Q. Which one?

9 A. In those Orders-In-Council of
10 1950, and the later one.

11 THE CHAIRMAN: Yes, both pilot boat
12 and pilot stations.

13 THE WITNESS: This is correct.

14 MR. JACQUES: Q. Would you have any
15 with respect to the Quebec District and Montreal
16 District?

17 A. No, we have not. Yes, excuse
18 me; we have Quebec.

19 Q. How did you expend public
20 money ---

21 A. Sorry, I have not got that
22 with me, but it is on file.

23 THE CHAIRMAN: For the Quebec District?

24 MR. JACQUES: Q. For the Quebec District
25 and Montreal District, Cornwall and Kingston?

26 A. Might I refer to this Order-In-
27 Council that is on file?

28 THE CHAIRMAN: While they are looking
29 for this Order-In-Council continue some questioning
30 there.



1 MR. JACQUES: I mentioned Quebec and
2 Montreal, but we have not any for Cornwall nor for
3 Kingston. Of course, Kingston would come when we
4 discuss the Lake problems, but we have not any with
5 respect to the other Districts, Quebec, Montreal and
6 Cornwall.

7 THE CHAIRMAN: Will you make a note
8 and look into that and report tomorrow on that?

9 THE WITNESS: Yes, all right, My Lord.

10 MR. LALONDE: My Lord, I am lost and
11 I would like an explanation. I am in the fog here.
12 Are these Treasury Board minutes referring to authority
13 given to the Department to spend public money for
14 pilotage purposes -- expenses?

15 THE CHAIRMAN: That is right.

16 MR. LALONDE: And we are talking about
17 question number 2?

18 THE CHAIRMAN: That is right, number 2.

19 MR. LALONDE: "History of policies
20 with respect to deductions of operating expenses from
21 pilotage revenue"?

22 MR. JACQUES: If Your Lordship will
23 allow me a minute with counsel....

24 THE CHAIRMAN: Yes.

25 MR. LALONDE: All right, My Lord; I
26 see clear now.

27 MR. JACQUES: In order that everybody
28 shall see clearly, the question was to cover the
29 period preceding the $4\frac{1}{2}\%$ deduction which was proposed
30 in the letter by Mr. Baldwin to Mr. Rousseau.



1 THE CHAIRMAN: Yes.

2 MR. JACQUES: So we had a period ranging
3 from all expenses paid out of pilotage revenue, some
4 expenses paid out of pilotage revenue in some Districts
5 and then all Districts' expenses paid out of public
6 money except for Kingston -- and then a proposed return
7 to the previous position where part of pilotage dues
8 paid some of the operating expenses.

9 THE WITNESS: Of course, the Department
10 does not supply the boat at Cornwall. There is no
11 boat at Cornwall.

12 MR. JACQUES: Q. Oh, but you have got
13 a station; you have dispatchers and accountants.

14 THE CHAIRMAN: This is not the station;
15 it is the office.

16 THE WITNESS: These are administrative
17 offices. The Superintendent's office. These have never
18 come out of pilotage revenue until the Great Lakes part
19 now. The Superintendent in Halifax was not paid for
20 out of pilotage revenue in the old days.

21 THE CHAIRMAN: In the old days?

22 THE WITNESS: No.

23 THE CHAIRMAN: Since when is the salary
24 of the Supervisor or Superintendent being paid out of
25 public money and not the pilotage revenue?

26 THE WITNESS: Well, it is long before
27 my time, My Lord.

28 THE CHAIRMAN: You do not know why it
29 was changed, why it was public money that was being used
30 for that?



1 THE WITNESS: I think it was following
2 one of the royal commissions where they recommended
3 that the Supervisor should be a public servant.

4 THE CHAIRMAN: You do not know whether
5 an Order-In-Council was passed at that time to authorize
6 that?

7 THE WITNESS: There would have to be an
8 Order-In-Council to set up a new position, but ---

9 MR. JACQUES: If I used the expression
10 "station" I made a mistake; but there must be an
11 Order-In-Council or Treasury Board minute covering
12 the expenses of the offices where the dispatching is
13 done.

14 THE CHAIRMAN: And the staff, the
15 Superintendent and his staff and also the office
16 expenses.

17 MR. JACQUES: Because under the law of
18 the Department of Transport the Minister may undertake
19 any service or provide any service which is assigned
20 to him either by the law or by Order-In-Council and
21 pilotage is not per se assigned to the Minister.

22 THE CHAIRMAN: You recall in British
23 Columbia stamps and stationery is not provided out of
24 public funds?

25 THE WITNESS: I think it is now, My Lord,
26 since we found out about it.

27 THE CHAIRMAN: So I would like to find
28 out why it is paid out of public money in the other
29 Districts and why the salaries of the dispatchers, the
30 Superintendent, the clerks at the local offices of the



1 Authority are being paid out of public expense. There
2 must be an authority for that and I would like to find
3 out.

4 THE WITNESS: I am afraid I cannot answer
5 this question. I will have to get the Personnel to do
6 this.

7 THE CHAIRMAN: Will you, please?

8 MR. JACQUES: Q. And if you say there
9 was no need for a Treasury Board minute or Order-In-
10 Council for these expenses, then why was one adopted
11 with respect to the pilot boats which were boats
12 registered in the Minister's name?

13 THE CHAIRMAN: In New Westminster, for
14 instance, where there is a local Commission, why should
15 they be obliged to pay their own expenses for the
16 dispatchers?

17 MR. JACQUES: Secretary-Treasurer....

18 THE CHAIRMAN: Secretary-Treasurer and
19 so on, while it is being paid for by public funds in
20 other Districts?

21 THE WITNESS: There is a tie-in here
22 with the fact that where the Minister is the Pilotage
23 Authority ---

24 THE CHAIRMAN: This is what we would like
25 to find out -- what it is.

26 THE WITNESS: Exactly. I cannot explain.
27 I will get the Personnel people to do so.

28 THE CHAIRMAN: Will you get somebody
29 to check that?

30 MR. JACQUES: A very innocent-looking



1 question but it requires an involved answer.

2 THE WITNESS: One that we have never
3 had time to look into.

4 THE CHAIRMAN: All right.

5 MR. JACQUES: Q. Question number 3,
6 CANADA PILOT NO. 4 ---

7 THE CHAIRMAN: Excuse me; would you have
8 anything else to ask on question number 2 before we
9 pass on to 3?

10 All right.

11 MR. JACQUES: Q. CANADA PILOT NO. 4,
12 certificate is valid only for voyages not more than
13 three miles off the entrance of Sydney Harbour, whilst
14 the Pilotage District limits are six miles seaward
15 from entrance. Why does not the certificate of
16 the pilot boat cover the same extent as the Pilotage
17 District limits?

18 A. We called the local Supervisor
19 on this point and he said because the boat never goes
20 out further than three miles. This was his answer.
21 But he also said that if we wanted it for six miles
22 it would have been put in for six miles. It has no
23 special significance.

24 Q. Well, I am glad to hear you
25 say that the inspection certificate has no special
26 significance. I was always of the same opinion anyway.

27 A. Excuse me, this is wrong, My
28 Lord; this is not fair. The fact that she goes
29 three miles, 3.2 miles, off has no special significance
30 so far as the seaworthiness of the boat is concerned.



1 The steamship inspector there discusses the matter with
2 the local Supervisor or the owner of the boat, if it
3 happens to be a private boat, and says: "How far do
4 you want to go out?" Then if, in his opinion, the boat
5 is fit to go out as far as is required, then he
6 gives a certificate accordingly. But there would be
7 no change in rules or anything like this which would
8 affect this extra three miles. In fact, as the
9 Supervisor said, in future perhaps we had better put
10 on it "For the Pilotage District" -- and this could be
11 done just as well.

12 Q. If the inspector is of the
13 opinion that the boat is not fit to go beyond a
14 certain limit, then it is because there is some inherent
15 reason for it?

16 A. Yes, some definite reason.
17 Either this puts it in another class under the regulations
18 which would require some extra lifesaving equipment or
19 some extra strengthening or something like this -- but
20 this would not be the case in this particular instance.

21 Q. These boats are assigned for
22 duty for search and rescue; is that correct?

23 A. If they are required to, yes.

24 Q. Why are they not properly
25 certificated for that job? They are only certificated
26 for three miles off Sydney Harbour entrance.

27 A. If there was a case of an
28 accident I think that the fitness of the boat to go
29 would not depend on the steamship inspection certificate;
30 it would depend upon whether the people who were willing



1 to take her would go with her.

2 Q. Well then, what is the value
3 of the steamship inspection certificate?

4 A. There is a law that requires
5 that they must be inspected, and this is the certificate
6 to say that it has been duly inspected and complies
7 with the regulations for the work that she is required
8 to do.

9 Q. And the inspector has authority
10 to limit the extent of the voyages of the vessel and if
11 the inspector limits the extent of the voyages to three
12 miles would there not be a good reason for it?

13 A. You would think there would be,
14 but I have explained how this happens in this case.

15 Q. Thank you.

16 A. The fact was that the inspector
17 was informed she was not required to go out beyond
18 three miles.

19 MR. JACQUES: I should like to file as
20 Exhibit 1357 an Order-In-Council dated the 29th
21 September, 1960, P.C. 1960-1344, which sets out the
22 limits of Sydney Harbour.

23 ---EXHIBIT NO. 1357: Order-In-Council P.C. 1960-1344,
24 dated 29th September, 1960.

25 Q. I submit to you that if these
26 limits mean something your boat goes out to six or
27 seven miles from these limits?

28 A. Oh, yes, but these limits are
29 for the purpose of the harbour. These have nothing to
30 do with the pilotage limits.



1 THE CHAIRMAN: They are not the Pilotage
2 District limits?

3 THE WITNESS: No, sir.

4 MR. JACQUES: No, they are not, My Lord.
5 I never pretended that they were the Pilotage District
6 limits, but they are the limits of Sydney Harbour and
7 under the law there is one definition of "harbour".
8 If a boat is certificated to go three miles from the
9 harbour limits it is three miles from the harbour
10 limits as set out in the Order-In-Council; and this
11 is way inside, My Lord, the entrance -- let us say the
12 natural entrance to Sydney Harbour.

13 THE WITNESS: This is a fine legal point
14 again, Mr. Jacques.

15 MR. JACQUES: Thank you, sir.

16 THE WITNESS: It has no significance
17 practically.

18 MR. JACQUES: Q. I am again glad to
19 hear you say that these certificates have no legal
20 significance. So this answers questions numbers 3 and 4.

21 Are you able to answer question
22 number 5 with respect to the contributions to the
23 pension fund? We should like to know when it became
24 tax-free or if there were any discussions whether they
25 should be tax-free or not?

26 A. Yes. There was a ruling by
27 the tax people that they were not tax-free.

28 Q. Would you recall the date of
29 that ruling?

30 A. Oh, no.



1 Q. Would you obtain copies of the
2 rulings so that we might file them as Exhibit 1358?

3 A. We wrote to the Tax Department
4 about this and after three times they did reverse their
5 decision. We will get the dates and the copies of the
6 letters.

7 Q. If you please. So I take it
8 that the original position was that it was not tax-free?

9 A. Correct.

10 Q. Then you negotiated with them
11 and it became tax-free?

12 A. Correct.

13 Q. Would you file the correspondence
14 with respect to this question as Exhibit 1358;
15 correspondence exchanged between the Department of
16 Transport and -- with whom did you exchange that
17 correspondence?

18 MR. LALONDE: The Department of National
19 Revenue.

20 THE WITNESS: Department of National
21 Revenue, Income Tax Division.

22 MR. JACQUES: Department of National
23 Revenue with respect to the contributions to the
24 pension fund, whether they are tax-free or not.

25 ---EXHIBIT NO. 1358 (to be produced): Correspondence
26 between Department of Transport and
27 Department of National Revenue re
contributions to pension fund being
tax-free.

28 MR. JACQUES: Q. And they are tax-free
29 now?

30 A. Yes, I understand so.



1 Q. Are you able to answer question
2 number 6: "Are there any vessels clearly subject to
3 compulsory payment of pilotage dues which do not employ
4 pilots and do not pay dues; i.e., any tacit exemptions?"
5 We have heard of some of them granted by pilots out on
6 the West Coast. I recall there was a training ship
7 which had come in and there was a hospital ship which
8 had come in and they declined collecting their fees
9 for those two.

10 A. That was an individual instance,
11 but the Commission has already been made aware of the
12 fact that ships going through the District to Alaska
13 are also allowed to pass through without any claim for
14 dues. There are also the Triangle ships, the Peugeot
15 Sound passenger ships, on a reciprocal basis.

16 Q. Are there any other similar
17 tacit exemptions in the other Districts?

18 A. There was in the Montreal
19 District with regard to movages of lake vessels above
20 the Clock Tower, but this no longer exists.

21 Q. When was the practice dis-
22 continued?

23 A. At the time of the opening of
24 the Seaway.

25 MR. BRISSET: I should add, My Lord, that
26 the pilots very graciously exempted the CHRISTIAN
27 RADICH when she came up and down the St. Lawrence this
28 summer -- the Norwegian training ship.

29 MR. JACQUES: Q. Question number 7:
30 "Has the Department ever taken Court action within the



1 last ten years to recover pilotage dues?"

2 A. No, sir.

3 Q. Question number 8: "State for
4 each year since 1958 inclusive, the number of
5 certificates of each grade granted under Section 116(1)
6 (a) (b) (c) and (d) of the Canada Shipping Act."

7 A. This statement is being
8 prepared and will be made available.

9 MR. JACQUES: We might as well give it
10 an Exhibit number now. This will be Exhibit 1359
11 entitled "Statement of the number of certificates of
12 each grade granted under Section 116(1)(a)(b)(c)(d) of
13 the Canada Shipping Act for 1958.

14 ---EXHIBIT NO. 1359: Statement of the number of
15 certificates of each grade granted
16 under Section 116(1)(a)(b)(c) and
(d) of the Canada Shipping Act,
for 1958.

17 MR. JACQUES: Q. Question number 9:
18 "File relevant Orders-In-Council, or indicate section
19 of the law making the payment of pilotage dues
20 compulsory for the Districts of Quebec and Montreal".

21 A. With Your Lordship's permission
22 I would like to have Mr. McGillivray answer that one.

23 THE CHAIRMAN: All right.

24 MR. JACQUES: Q. Question number 10:
25 "Has the Department any indication that Masters of
26 vessels who make adverse reports on any pilot are
27 'blacklisted' by pilots?"

28 A. No, sir.

29 Q. You have never heard of that?

30 A. Not on the Canadian side.



1 Q. Not on the Canadian side. You
2 have never heard of that? You have had no indication
3 whatsoever?

4 A. I don't see how they could on
5 the Canadian side.

6 Q. I don't know. I have never --

7 A. No, I wouldn't say that it is
8 feasible on the Canadian side.

9 Q. Would you check with your staff
10 in order to make doubly sure that perhaps you have not
11 heard about it and perhaps some of your staff has?

12 MR. LALONDE: If my friend has some
13 private information, he should make it available to
14 the Commission. I would like to hear about that.

15 THE WITNESS: Would you explain what
16 you mean by "blacklisted"?

17 MR. BRISSET: I was just about to ask
18 for that.

19 MR. JACQUES: Q. Well, perhaps say if
20 a Master makes a report on a pilot that a pilot has
21 been inebriated or for any other reason, when that
22 vessel is next within the District the pilots, for
23 instance, may feel more inclined to anger more often
24 or not proceed with the usual dispatch?

25 A. No, I wouldn't know this. There
26 is no need to have me check with my staff. I would have
27 no need to know anything because --

28 Q. I wish you would check just
29 the same.

30 A. All right.



1 MR. LALONDE: My friend seems to imply
2 he has some private information. I would suggest he
3 should put the witness in the box. That is what I am
4 going to ask for.

5 THE CHAIRMAN: The answer will come
6 from this check. If you find nothing, this has to
7 be just dropped.

8 MR. JACQUES: Q. Question number 11 is
9 with reference to Exhibit 1146 which was the
10 organization chart for the pilotage and I was wondering
11 whether you could supply us with information with
12 respect to salaries, fringe benefits and whatnot?

13 A. This is being prepared.

14 THE SECRETARY: Shall we give that an
15 Exhibit number?

16 MR. JACQUES: Yes. It will be Exhibit
17 1360. Perhaps we had better wait until we have seen
18 the several exhibits before describing it.

19 ---EXHIBIT NO. 1360: (To be filed)

20 THE CHAIRMAN: We shall leave this
21 number open for that Exhibit, in answer to question
22 number 11 of the written questions.

23 MR. JACQUES: Q. Question number 12:
24 "Has any analysis of casualties ever been made
25 classifying causes of same with a view to bringing about
26 corrective measures?"

27 A. No.

28 Q. No?

29 A. No.

30 Q. Thank you.



1 A. We are very interested in
2 anything we do see in this line but perhaps the
3 Commissioners have already seen an article of this
4 kind or an analysis of this kind printed in the
5 proceedings of the Merchant Marine Council, United
6 States.

7 Q. With respect to Canadian waters?

8 A. All over the world.

9 Q. Would you find a reference for
10 us, please?

11 A. Yes. I thought the Commission
12 already had it. It is a very good analysis. Personally
13 I don't think it explains very much but --

14 Q. Would you find the reference
15 for us, please?

16 A. Yes.

17 Q. You have no tabulation of
18 casualties even by areas or by nature of casualties?

19 A. Not in this sense, not in
20 making a statistical study of this.

21 Q. How do you classify your
22 casualties?

23 A. We have them in the St. Lawrence
24 River and the East Coast and West Coast.

25 Q. So if I were to ask you I
26 want all cases of groundings within the Quebec Harbour
27 limits --

28 A. We would have to look in the
29 registry and pick out all those which are within the
30 Quebec Harbour.



1 Q. Thank you. Question number --

2 COMMISSIONER SMITH: Just on a matter
3 of interest, My Lord, I wonder if I might refer back
4 to question number 7.

5 I understand, Captain, that in
6 Brazil ships must have on board the receipts for
7 pilotage paid at a port which has been left. What is
8 your view of that kind of policy?

9 THE WITNESS: If the ships come in from
10 a foreign port to Brazil, Mr. Smith?

11 COMMISSIONER SMITH: That is what I
12 understand. Every ship that comes to a port in
13 Brazil and pays pilotage dues must have that receipt on
14 board ship after leaving port.

15 THE WITNESS: If it is going from one
16 port in Brazil to another port in Brazil?

17 COMMISSIONER SMITH: Wherever pilotage
18 dues are required in the country.

19 THE WITNESS: We have not anything like
20 that now.

21 COMMISSIONER SMITH: No. I was wondering
22 what your opinion would be on that kind of policy?

23 THE WITNESS: This again would only
24 apply, I suppose, if it was going from one Canadian
25 port to another.

26 COMMISSIONER SMITH: Well, the way I read
27 the statement was that it applied to all ships in Brazil
28 that paid pilotage dues. I do not know what their
29 coastal regulations are there. I took it for granted
30 every ship that had to pay pilotage dues had to have this



1 receipt on board after leaving port where pilotage dues
2 were paid.

3 THE WITNESS: Well, this might be a good
4 idea but it would be very difficult to do under our
5 present system because the dues are paid by the agents
6 usually after the ship has left and this receipt would
7 not be on board the ship.

8 COMMISSIONER SMITH: It could not be
9 worked out?

10 THE WITNESS: I wonder what would be the
11 use of it, Mr. Smith.

12 COMMISSIONER SMITH: I don't know frankly.
13 All I know is that it seems to be the policy in Brazil.
14 I was wondering -- there must be some good reason for it
15 down there and I was wondering how it would work here.

16 THE WITNESS: I have not had that drawn
17 to my attention before.

18 THE CHAIRMAN: Do you know what type of
19 pilotage they have in Brazil? What type of coastal
20 pilotage or river pilotage?

21 THE WITNESS: Port and river pilotage,
22 My Lord, as far as I know. They pick up pilots
23 outside the port as usual but I don't know if they
24 have any coastal pilots as well. I have not heard of
25 that. They have deep sea ships going along the coast
26 of Brazil all the time without pilots.

27 THE CHAIRMAN: So it is really harbour?

28 THE WITNESS: I think it is harbour and
29 river pilotage.

30 MR. BRISSET: Captain, one of the



1 objectives of the Shipping Channel Branch is to improve,
2 is it not, the security of navigation on the river?

3 THE WITNESS: Particularly with regard
4 to the security or safety of their installations, yes.

5 MR. BRISSET: In this regard has there
6 ever been an investigation made of the casualties in
7 certain parts of the river with a view to making
8 recommendations to the Ship Channel Branch as to, for
9 instance, the displacement of range lights or the
10 installing of a buoy or any other aids of the same
11 nature? To give a particular illustration, I have
12 heard that pilots, for instance, had complained about the
13 range lights in the Harbour of Quebec. Now, has there
14 been any investigation of casualties that might have
15 occurred in the Harbour of Quebec and that could
16 possibly be linked to either the insufficiency of the
17 range lights or their being placed in a location which
18 would not be best, and so forth?

19 THE WITNESS: Well, of course, if the
20 pilots were recommending an improvement in the range
21 lights or a set of ranges, they would raise any problem
22 or any case where the existing situation had contributed
23 to a casualty or any other reason they might have for
24 supporting their request for a change.

25 MR. BRISSET: But the Department has not
26 on its own made any study of casualties that might
27 have happened in a certain section in order to make its
28 own recommendations to the Ship Channel Branch, as far
29 as you know?

30 THE WITNESS: No, not as far as I know, no.



1 MR. JACQUES: I might point out one
2 casualty of the type which Mr. Brisset refers to which
3 occurred in 1945 between the EMPIRE SNOW and the POINT
4 PELEE PARK. The POINT PELEE PARK was at anchor at the
5 particular time. She was nearly rammed by a ship coming
6 upriver, the EMPIRE SNOW, on a very clear night. The
7 accident fortunately turned out to be minor but was due
8 to the fact that the ship's light had been lost in the
9 background of the lights of the Harbour of Quebec.

10 A. This is something that occurs
11 everywhere where there is a city. There was a casualty
12 in Vancouver Harbour recently exactly the same thing,
13 where an outgoing ship's lights, on an absolutely clear
14 night, were not distinguishable from the background of
15 city lights until it was too late for the incoming
16 ship to clear her.

17 THE CHAIRMAN: We did have evidence on
18 that.

19 THE WITNESS: Yes, sir.

20 MR. LALONDE: I have only a few questions
21 in case we do not have the opportunity of seeing Captain
22 Slocombe back in the box.

23 CROSS-EXAMINATION BY MR. LALONDE:

24 Q. You referred to pilotage else-
25 where, Captain. Can you tell us whether your Department
26 or your own Section has ever kept a regular file on
27 pilotage elsewhere in the world?

28 A. No. You say a regular file.
29 In what sense?

30 Q. What I was referring to was a



1 kind of regular information kept up to date on how
2 pilotage is run and how it is operated elsewhere in
3 the world?

4 A. No. We try to keep au fait
5 with matters outside through the shipping magazines
6 and Lloyd's reports and so on.

7 Q. But that is the extent of the
8 information which your Branch would have kept over the
9 years?

10 A. This is correct. If we saw
11 anything that looks interesting then we would make
12 further inquiries about it.

13 Q. Your Section, therefore, has
14 never engaged in, let us say, studying in depth any
15 pilotage system elsewhere than in Canada. Is that
16 correct?

17 A. Not in depth, no.

18 Q. Now, I don't know whether
19 the question was asked of you because I know you
20 testified previously in Ottawa here in June, I think.
21 When you were appointed, did you receive a document
22 which would have given your terms of reference, similar
23 to those given to Captain Jones?

24 A. There must have been a statement
25 of duties somewhere but I don't remember seeing any
26 document at all. I was told I was appointed. At that
27 time I was Assistant Supervisor at first and then later
28 on as Chief of the Division, but there must be a
29 statement of duties for this position.

30 Q. Is there a clear definition of



1 duties, let us say, which would differentiate your
2 duties in connection with pilotage from those of
3 Mr. Cumyn and Captain Jones? Do you know of any?

4 A. No, it is a matter of ladder,
5 you might say.

6 Q. So in effect you do not have
7 any clear-cut definition of duties in the sense that
8 you are not in a position to establish from that
9 definition of duties what type of decisions you can
10 make on your own and what should be referred further up?

11 A. No, that would be ascertained
12 from that. As Captain Jones said, I am in the same
13 position he is. If it is something that is, I feel,
14 not anything too controversial and that is for the
15 benefit of the service, I will go ahead and do it. If
16 it is something that there are diversities of opinion
17 about and that some people are displeased about, then
18 it is always wiser that I, first of all, clear it with
19 higher authority so they know what is going on and so
20 they do not have to cancel what I have done or tried to
21 do.

22 Q. I understand that you have to
23 refer very much more often to your superior matters
24 that come before you. Is that correct?

25 A. Of late years, yes, especially
26 since the pilots started hiring lawyers.

27 THE CHAIRMAN: When you are dealing with
28 people who are not part of the Department of Transport,
29 do you sign for the Minister or do you sign your own
30 name and appointment, under your own authority, or do you



1 sign for the Minister of Transport?

2 A. There are a host of letters
3 going out from my desk that I sign for myself, over
4 my own signature, yes, My Lord.

5 MR. LALONDE: Q. I understand it is
6 the same for Captain Jones also?

7 A. This is so.

8 THE CHAIRMAN: I mean, letters going
9 outside of the Department not to your inferiors or
10 employees?

11 THE WITNESS: No, sir. Outside the
12 Department on any matter that I have information on.
13 Usually, if a letter is addressed to the Deputy Minister
14 the letter in reply is made for his signature and so on,
15 but if -- I am pretty well known now -- I do have a
16 lot of letters addressed to me directly and I answer
17 them directly.

18 THE CHAIRMAN: It is not the same policy
19 as it was in National Defence, for instance, where all
20 the letters going out would be signed by the Secretary
21 of National Defence?

22 THE WITNESS: No, sir.

23 MR. JACQUES: I understand that show
24 cause letters are signed by Captain Jones?

25 THE WITNESS: They have been, yes. It
26 is not a rule, it is only --

27 MR. JACQUES: I know, but in fact they
28 are signed by Captain Jones?

29 THE WITNESS: If Captain Jones came to
30 me and asked me to sign it --



1 THE CHAIRMAN: As a superior?

2 MR. JACQUES: From the General Super-
3 intendent of Pilotage.

4 THE WITNESS: This is quite so. If
5 Captain Jones came to me with a letter and said he
6 would like me to sign it, I probably would.

7 MR. LALONDE: Q. Now, I would like
8 to file a document -- I would like to show it first
9 to Captain Slocombe, a document which was transferred
10 to me and prepared by the Department of Transport
11 entitled "Officials directly concerned with Pilotage,
12 period 1933 to 1963, Department of Transport, Ottawa".

13 Are you aware that this
14 document had been prepared in your Branch which I
15 received under the signature of Mr. Cumyn?

16 A. I didn't see it before but
17 Captain Jones tells me this was prepared in the
18 Pilotage Office.

19 Q. This document contains the
20 names and offices of various people, their place of
21 origin, nationality, terms of office, connected with
22 pilotage and I notice that you have an Investigations
23 Officer called Captain J. J. Gendron. Captain Gendron
24 was there for a while. Is it not a fact, however, that
25 Captain Gendron was concerned as an Investigations
26 Officer not only with pilotage matter but also of other
27 casualties?

28 A. Yes. This was the intention of
29 his appointment.

30 Q. So that only part of his time



1 would have been given to dealing with casualties
2 involving pilots?

3 A. It was mostly so.

4 Q. And his only function was to
5 investigate casualties. Is that correct?

6 A. Yes, that was why he was
7 appointed, yes. Of course, he might be asked to join
8 in discussions though on other matters.

9 Q. Now, I notice that this document
10 is not quite up to date but we have your other chart
11 which will bring the matter up to date.

12 A. Yes.

13 Q. I would like to file this
14 document as the next Exhibit.

15 THE CHAIRMAN: Can we annex it to the
16 chart already filed?

17 THE SECRETARY: The chart is Exhibit 1146.

18 THE CHAIRMAN: It will be an appendix to
19 Exhibit 1146.

20 MR. LALONDE: Thank you.

21 THE CHAIRMAN: We will now adjourn until
22 tomorrow morning at ten o'clock. I am informed that
23 Mr. McGillivray is going to be available tomorrow
24 afternoon so we will carry on with him.

25 ---WHEREUPON THE HEARING WAS ADJOURNED.

149

ROYAL COMMISSION

ON



PILOTAGE

HEARINGS

HELD AT

OTTAWA

VOLUME No.:

149

DATE:

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ROYAL COMMISSION ON MARINE PILOTAGE

Proceedings of the hearings held
in the Exchequer Court Building,
Ottawa, Ontario, on Tuesday, the
29th day of September, 1964.

COMMISSION

| | |
|------------------------------------|-----------|
| The Honourable Mr. Justice Bernier | Chairman |
| Mr. Robert K. Smith | Member |
| Mr. Harold A. Renwick | Member |
| Mr. Gilbert Nadeau | Secretary |

COMMISSION COUNSEL

Mr. Maurice Jacques

PRESENT

| | |
|----------------------|--|
| Mr. J. Brisset, Q.C. | for the Shipping Federation of Canada |
| Mr. Marc Lalonde | for the Federation of St. Lawrence River Pilots; Corporation of the Lower St. Lawrence Pilots; Cor- poration of Montreal Harbour Pilots; Corporation of the Mid-St. Lawrence Pilots; Corporation of the St. Lawrence River and Seaway Pilots; Corporation of the Upper St. Lawrence Pilots |
| Mr. R. Langlois | for the Canadian Merchant Service Guild |
| Mr. R. Macgillivray | for the Department of Transport |



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Ottawa, Ontario,
Tuesday,
September 29, 1964.

---Upon commencing at 10.05 a.m.

BERNARD WILSON, sworn

DIRECT EXAMINATION BY MR. JACQUES:

Q. Would you state your full name,
please?

A. Bernard Wilson.

Q. What is your position with the Department of Labour?

A. I am Director of the Industrial Relations Branch and I am also Chief Executive Officer of the Canada Labour Relations Board.

Q. Now, sir, the Commission has directed several questions to the Department of Labour and I am advised that you have been delegated to answer questions 4 and 5 of Exhibit 1291. Question No. 4 reads as follows: "Has the department been requested in the course of the last five years to study the possibility of bringing pilots in Canada within the purview of the Industrial Relations and disputes Investigation Act? If so, when and by whom? Was such a study carried out, and if so, give particulars explaining fully the views of the department and the result of the study? "

A. That is all one question?

Q. It is all one question.

A. Well, in late 1959 -- December 8th, I



1 think, -- the Deputy Minister of Transport wrote a
2 lengthy letter to the department in which he raised
3 the question of the practicability of bringing pilots
4 within the purview of the Industrial Relations and
5 Disputes Investigation Act. We studied the question
6 for five or six weeks and I think early in February
7 of 1960 we wrote -- that is, the Deputy Minister of
8 Labour wrote the Deputy Minister of Transport and
9 indicated a number of questions which had occurred to
10 us and possible difficulties which we thought ought
11 to be considered by the Department of Transport before
12 they pursued the matter further. We invited them to
13 do so after they had given consideration to our ques-
14 tions.

15 That was the end of the correspon-
16 dence. I might say that midway we had asked Transport
17 to supply us with copies of orders-in-council and
18 other conditions governing the employment or retention
19 of pilots, and this was supplied to us. Transport's
20 letter was predicated on the fact that there were a
21 number of sudden stoppages of pilots in which they
22 gathered ashore for a meeting and it was felt that by
23 bringing them under the Act these rather spontaneous
24 or rather sudden stoppages might be controlled in
25 some way.

26 THE CHAIRMAN: At the time you were
27 not considering the pilots that are public employees
28 but just those in Montreal and Quebec who are not
29 public employees?

30 THE WITNESS: Well, sir, that is one



1 of the questions that we have raised in reply. We
2 indicated that serious consideration would have to be
3 given to the fact that it would be difficult to have
4 some of the pilots under the Civil Service Act and
5 some under the Industrial Relations and Disputes
6 Investigation Act. That is to say, for some pilots
7 their remuneration would be settled by order-in-council
8 in one way and others, if the scheme went through in
9 part only, their remuneration would be settled by
10 collective bargaining under the Act. It was felt
11 that Transport ought to consider these matters before
12 they pursued their original line because we could see
13 some difficulties arising if we had this divided
14 situation.

15 MR. JACQUES:

16 Q. I have three bundles of documents,
17 one entitled Pilotage Disputes. It is undated.
18 Would you look at it and tell me whether this was
19 prepared in your department?

20 A. Yes, these were all prepared in our
21 department.

22 Q. The three of them?

23 A. In response to a request from
24 Transport that we supply your Commission with an
25 account of the correspondence on our files which had
26 to do with pilots over the years. You will see
27 that this one goes back to 1937. The others are much
28 more recent, I believe.

29 Q. All of these documents are undated
30 and I wonder for the sake of clarity of the record



1 whether you might not try to pinpoint the date on which
2 they were written. I should like to file these
3 documents in a bundle as Exhibit No. 1361 -- a bundle
4 of documents and a covering letter from Mr. Haythorne
5 to Mr. Baldwin on January 15th, 1963, relating to
6 pilotage in connection with the Industrial Relations
7 and Disputes Investigation Act. Is that correct?

8 A. Well, really, it had relation to all
9 matters, as I recall it, of pilotage, concerning pilots
10 and their disputes, their organization. I know that
11 we had word in my Branch in November of 1962 that Mr.
12 Haythorne had discussions with the Deputy Minister of
13 Transport concerning the Royal Commission on Pilotage
14 which was expected to commence its work soon and Mr.
15 Haythorne said that the Commission would desire infor-
16 mation on, one, the organization of pilots in Canada
17 now and during past years -- and that is the subject
18 of one of the documents -- two, the labour relations
19 and collective bargaining activities of organizations
20 comprising or including pilots, including certifica-
21 tions issued to pilots' organizations and bargaining
22 agencies for units of employees, of pilots. Then
23 the third group was disputes or controversies that
24 had developed in the past and their outcome.

25 ---EXHIBIT NO. 1361:

26 Bundle of documents con-
27 cerning pilots' activities
28 and covering letter from
29 Mr. Haythorne of the De-
30 partment of Labour to Mr.
Baldwin of the Department
of Transport, dated January
15th, 1963.



1 MR. JACQUES:

2 Q. Would you examine the first of these
3 documents entitled "Pilotage Disputes"? This was
4 prepared as a result of the request which you have
5 just mentioned, is it not?

6 A. Well, this is the summary of disputes
7 and developments involving labour relations affecting
8 ships' pilots. That was the original document.
9 I see that it starts on the first page with an account
10 of some occurrences in April, 1957. However, sub-
11 sequently we had our Central Registry dig up a file
12 which went back as far as 1937, and this followed
13 later. This is the early document that went ---

14 Q. The first document you prepared is en-
15 titled "Summary of disputes and developments involving
16 labour relations", etc.?

17 A. That is right.

18 Q. The second document is entitled
19 "Pilotage Disputes"?

20 A. Yes. Well, this is supplementing
21 that.

22 Q. And Pilotage Disputes supplemented
23 the first mentioned document?

24 A. Yes.

25 Q. So in these two documents we would
26 have the story of pilotage, the history of pilotage
27 from your point of view since 1937?

28 A. Oh, there is a gap in between from
29 about 1937 to 1946 in which our files contained nothing,
30 so I assume that there was nothing referred to the



1 department in those years.

2 Q. The third document is entitled "Back-
3 ground of the Organization of Pilots in Canada"?

4 A. Yes. That contains an account of
5 the organization of pilots in Canada and their con-
6 nection, which was slight, with the masters, mates and
7 pilots' organization in the United States.

8 Q. And all of these documents were pre-
9 pared at the end of 1962?

10 A. That is right, except that this one
11 was prepared somewhat later.

12 Q. The one entitled "Pilotage Disputes"?

13 A. Yes, which has an account of the 1937
14 and subsequent incidents.

15 Q. I see that in one of these documents
16 you make reference to a letter from your Deputy Minister
17 to the Deputy Minister of Transport dated February 2nd,
18 1960. It appears that it was the last letter in what
19 had been an exchange of correspondence?

20 A. Yes.

21 Q. You have not heard from the Department
22 of Transport since that letter, have you?

23 A. Well, they have not seen fit to carry
24 on the correspondence after that time. They may have
25 had talks with the Deputy Minister but our files show
26 no subsequent developments.

27 Q. No subsequent developments?

28 THE SECRETARY: May I ask Commission
29 counsel to refer to the page of the documents?

30 MR. JACQUES: I am sorry. This is



page 20 of the document entitled "Summary of Disputes and Developments Involving Labour Relations."

THE WITNESS: I point out too that when this material was prepared in my branch at the request of the Deputy Minister of Transport we of course advised him of the incorporation of this correspondence and indicated to him that inasmuch as the correspondence had emanated from him he may in sending it to you consider whether or not that correspondence should be included.

MR. JACQUES:

Q. I see, so this is the editing to which reference is made in some of these documents?

A. Not editing as such; it is the exercise of discretion by the person who initiated the correspondence as to whether his letters should be revealed. After all, he had asked that. He had raised the question of correspondence and we felt that he should -- inasmuch as he had asked for the information for the Commission we drew attention to that correspondence.

Q. With reference again to that letter at page 20 of the Summary of Disputes I read as follows:

"The difficulties to be encountered in defining and locating an employer of the pilots as between the various pilotage authorities, the Shipping Federation and Association and the shipowners" --



1 This was one of the difficulties to which you drew
2 attention with respect to pilotage. Now it seems
3 that you have considered that pilots might be employees
4 of pilotage authorities; is that correct?

5 A. Frankly on the basis of the infor-
6 mation we had we indicated the difficulty because it
7 was not clear to us. We realized, of course, that
8 it could be made clear in legislation under another
9 system, but in the system then existing it would seem
10 very difficult to us to locate in collective bar-
11 gaining legislation the actual employer of the pilots
12 because, as I recall it, you have the shipowner in-
13 volved, you have the Shipping Federation involved,
14 you have the Dominion Marine Association involved and
15 in some cases you have the Shipowners' Association
16 involved; and in some cases you had pilotage authori-
17 ties involved. In some cases the Minister of
18 Transport was the Pilotage Authority. We felt,
19 although this perhaps was not spelled out in the
20 letter, that in collective bargaining legislation
21 you would have to define and locate the employer with
22 some exactitude in order to make legislation effec-
23 tive.

24 THE CHAIRMAN: Do you not think the
25 difficulty results from the type of remuneration that
26 the pilots have? That is, what remains after some
27 deductions have been put down by the Authority for
28 their expenses, for the pension fund and so on, that
29 whatever remains of the collection of the revenues
30 is their remuneration?



1 THE WITNESS: Yes.

2 THE CHAIRMAN: So therefore it makes
3 up the tariff and the remuneration to the same bar-
4 gaining, therefore involving the public and the shipping
5 interests at the same time, and they are just bargain-
6 ing their own remuneration.

7 THE WITNESS: That is true. We
8 find on our examination of the situation that the
9 Department of Transport was in a position to give many
10 things which in ordinary industry would be regarded
11 as fringe benefits to the pilots in the course of
12 rearranging their employment or settling disputes.
13 If you can get some remuneration from the shipowners
14 and you can get fringe benefits from the Department
15 of Transport you would have a rather untidy situation
16 from the standpoint of collective bargaining.

17 THE CHAIRMAN: Generally when you
18 talk about bargaining in labour relations you talk about
19 bargaining a fixed remuneration, a fixed salary; while
20 the pilots now, their take-home pay or their annual
21 remuneration is what is going to be left of the dues
22 collected. Is that not a difficulty in bargaining?

23 THE WITNESS: Well, bargaining as
24 it ordinarily means does not only mean bargaining
25 for remuneration. Remuneration can take several
26 forms now.

27 THE CHAIRMAN: Yes.

28 THE WITNESS: Vacations with pay,
29 overtime, and various other fringe benefits which are
30 a benefit to the employee and a cost to the employer.



1 It is desirable to know in collective bargaining who
2 is going to bear the cost. I do not think you can
3 have a system whereby the shipowners bore some part
4 of the cost and the Shipping Federation bore some
5 part and the Department of Transport bore some part
6 of the cost. All this would make for confusion in
7 the bargaining and would lead probably to a great
8 deal of disorder.

9 THE CHAIRMAN: Generally the bar-
10 gaining as you see it, as you meet it in practice, is
11 between the employer and the employees?

12 THE WITNESS: That is right.

13 THE CHAIRMAN: And normally it would
14 be between the Authority and the Pilots?

15 THE WITNESS: That is right, too.

16 THE CHAIRMAN: While in this situa-
17 tion we have it is between the clients of the service
18 and those performing the service -- between the
19 shipping interests and the pilots and not with the
20 Authority?

21 THE WITNESS: Well, under the pre-
22 sent situation it seems to me that there is a mixture
23 of responsibility which does not make for a clean
24 (if you can use the term) collective bargaining
25 situation.

26 THE CHAIRMAN: That is right.

27 THE WITNESS: The pilots under the
28 present system, I think, can look to the Department
29 of Transport for some things and on the other hand
30 the Department of Transport can look to the shipowners
for other things.



1 It seems to me that indirectly the pilots would be
2 seeking an increase in their pilotage fees from ship-
3 owners, but the distribution of that cost is not finally
4 fixed, it appears to me, under the present situation.

5 MR. JACQUES:

6 Q. You seem also to consider the pilots
7 in a block -- it is either all pilots or no pilots --
8 and you mention that this created difficulties because
9 some of them were civil servants and some of them seem
10 to be private contractors. But have you ever thought
11 of considering the pilots in one district as one
12 unit?

13 A. Well, you mean as part of the system
14 of having the pilots in the other separate units all
15 under one system?

16 Q. Well, yes.

17 A. Well, of course, that is what they are
18 now. That is how we have looked at this; but it is
19 the carryover from one system to the other that counts.

20 If you have pilots as civil servants
21 in one unit they may be relatively easy to deal with,
22 but if they sit through collective bargaining with
23 the pilots in another district who have an advantage,
24 that is going to unsettle the arrangements within the
25 civil service group, which would lead to adjustments,
26 naturally, in their working conditions.

27 To some extent they would be riding
28 on the shoulders of the other pilots in combined
29 collective bargaining, and probably would be supporting
30 them, too.



1 Q. Is that bad?

2 A. No; but we are looking at it -- I am
3 not going into the ethics of this -- I am looking at
4 it from the practicability of having a different
5 system for a different group of pilots. It might
6 work, but it seemed to us that if the pilotage
7 authority was named the employer and the pilotage
8 authority dealt with the pilots you would have a system
9 which at least was similar to that which you have now
10 with Crown corporations in the government service.

11 Q. Have you ever thought of considering
12 the pilots as the employees of the masters of the
13 vessels on which they perform their services and
14 having, as bargaining agents, the pilots' corporation
15 on the one hand and the Shipping Federation on the
16 other hand?

17 A. Well, we did think of that. That
18 brought up innumerable other questions.

19 In the first place, under the present
20 system we were by no means convinced that the pilots
21 can be considered civil servants in any sense except
22 under The Canada Shipping Act for liability; but we
23 felt that they were something in the nature of inde-
24 pendent contractors; and while this wasn't an insuper-
25 able obstacle in drafting legislation, when we looked
26 at the present situation it did offer a number of
27 difficulties which we thought needed to be considered
28 before we started giving consideration to ways in
29 which these difficulties could be met by legislation.

30 THE CHAIRMAN: Could you amplify those



1 difficulties you find in the present system?

2 THE WITNESS: Well, they involve,
3 for instance, in certain circumstances, that the
4 master of the vessel or the Shipping Federation
5 doesn't have to have a pilot at all. How can you
6 have a system of bargaining where it is optional
7 whether you have employees or not?

8 MR. JACQUES:

9 Q. Then, from your reasoning there you
10 imply that the pilots are the employees of the shipping
11 interests?

12 A. Well, if you consider them as em-
13 ployees of the shipping interests -- it is rather
14 difficult to consider them as employees when they
15 may not be employed on certain runs, or, as I said,
16 where it is optional with the employer. You have to
17 have employees before you can bargain, and they have
18 to have some stability of employment in the sense that
19 he simply can't be dismissed.

20 I realize that so far as seamen are
21 concerned, as with longshoremen, they are hired from
22 time to time when they are needed and that, over the
23 course of a season, they can look forward to getting
24 a reasonable amount of employment, and I would assume
25 that that is the case with the pilots, too; but there
26 is only one of them, and that represents another
27 obstacle, because bargaining is based upon a group
28 functioning in employment at one time. For instance,
29 the Labour Relations Board won't establish a unit of
30 one employee, and our Act doesn't consider one employee



1 as a unit. For instance, an elevator operator in an
2 apartment house, before they had automatic elevators,
3 was definitely not in a position to bargain because
4 there is only one elevator operator to an apartment
5 house. Similarly . . .

6 Q. Could not all the operators working
7 in several buildings form a union and a bargaining
8 unit?

9 A. That is right; but they are not a
10 bargaining unit in relation to one employer, unless
11 the employer were all the apartment houses; and that
12 in itself is the difficulty.

13 It is similar to the situation you
14 have in bargaining where there are a good many separate
15 employers. Now, our legislation doesn't permit
16 employer to be a part in proceedings unless they
17 consent to it, or unless they join an association
18 which can convey to the Labour Relations Board their
19 authority that it represents all of those employers.

20 If we receive an application for
21 certification involving the shipping companies em-
22 ploying pilots and it named as their representative
23 the Shipping Federation of Canada we would have to ask
24 the Shipping Federation of Canada to give us in
25 writing its authority to bargain for each of those
26 employers; and, naturally, they would go to the
27 individual employer and some of them would say No.

28 That is the situation -- if you
29 look at the correspondence -- which came about in 1937
30 when a number of employers signed an agreement with



1 respect to pilots, but the vast majority of them
2 refused to do so.

3 Q. But isn't that what the Shipping
4 Federation does today with respect to stevedores?

5 A. Yes; but only with the consent of
6 the employers who are its constituent members. If
7 they wish to drop out all they have to do is drop out
8 and to tell the Shipping Federation that they are no
9 longer interested.

10 Q. Couldn't the same thing be done
11 with respect to pilots?

12 A. Well, that is the point. Unless
13 it was firmly fixed in legislation who the employer
14 was you would have a situation where some shipping
15 companies would, so to speak, drop out.

16 Q. And you would expect bargaining would
17 take place, of course, between the shipping companies
18 represented by the Shipping Federation . . .

19 A. Yes.

20 Q. . . . and the pilots themselves?

21 A. That is true. But what are you
22 going to do with the rest? That is the point.

23 That is to say, as we saw it you
24 would have, unless the Shipping Federation has one
25 hundred per cent of the members of the shipping com-
26 panies and the assurance that none of them would drop
27 ou -- you would have a difficult situation; and it
28 wouldn't be to the satisfaction of the pilots if,
29 during the course of bargaining, the companies said
30 "We no longer desire to be represented by the Shipping



1 Federation."

2 Q. Yes, of course, I realize that. But
3 let us assume, for the moment, that the Shipping
4 Federation represents ninety per cent of the ships
5 plying the St. Lawrence and the pilots are formed
6 into a corporation. Now, bargaining could take
7 place between those two bodies, couldn't it, volun-
8 tarily?

9 A. Oh, voluntary bargaining can take
10 place any time.

11 Q. Under your Act?

12 A. If they are agreed on what they
13 want. It is when they refuse to bargain that the
14 difficulty comes about.

15 Q. Now, they refuse to bargain. Could
16 we bring them under the ambit of the Act?

17 A. Well the Act has some sections which
18 are concerned with refusal to bargain, but they would
19 be complicated in this situation by the difficulty the
20 Board would have in locating the employer.

21 Q. All right; you have the Shipping
22 Federation's written authority from ninety per cent
23 of the ships plying up and down the St. Lawrence.
24 Then you could do something.

25 A. Well, under our Act it would be
26 difficult, but under an Act which definitely stated
27 that the Shipping Federation would be the employer for
28 the purpose of representing all shipowners in Canada
29 in employing pilots, that would be another matter.

30 Q. But with your Act as it is?



1 A. Well, it would have to be rewritten.
2 It would have to have a special section governing the
3 Labour Relations and Disputes relating to pilots.

4 Q. Why?

5 A. Well, because it wouldn't be fair to
6 the rest of industry in Canada if you broadened this
7 section to the point where it probably suited the pilots
8 and the Shipping Federation and the Department of
9 Transport, but was no longer suitable to the persons
10 who are in employment which is probably not regular.
11 That is to say, we view the employment of pilots as
12 an aid to navigation and to serve a special purpose.

13 THE CHAIRMAN: Just to illustrate
14 this point, you have the case of British Columbia
15 where, over there -- and in quite a few other districts,
16 but we will take the District of British Columbia as an
17 example -- the Authority, who is the Minister, fixes
18 both the tariff and the remuneration of pilots. Tariff,
19 of course, is what is going to be paid by the user of
20 the service -- the shipping interests-- and the remunera-
21 tion of the pilots is what they will take hom in the
22 way of remuneration for their services.

23 THE WITNESS: Yes.

24 THE CHAIRMAN: But the Authority, in
25 order to do that, has used a committee -- they call it
26 an advisory committee -- as a conciliation board where
27 the shipping interests are asked to bargain both the
28 tariff which is, in effect, the remuneration of the
29 pilots at the one end -- bargain with the pilots --
30 and they refuse, and they say We are not talking in the



1 same language; we are talking about cost to the public
2 and they are talking about remuneration," and so they
3 say "We are put in a very impossible situation, because
4 we are not employers who can fix a tariff ourselves
5 or the other fringe benefits," and so on. Do you
6 think this is a good situation?

7 THE WITNESS: Well, you can have, at
8 the one extreme, your collective bargaining system for
9 regulating these disputes or requests from the pilots
10 -- at the one end -- and collective bargaining at the
11 other, and you could have compulsory arbitration, where
12 some individual arbitrator, if agreement couldn't come
13 about voluntarily between the parties, would fix the
14 remuneration.

15 It is entirely possible to set up
16 a system; but our correspondence relates to, and our
17 thoughts are directed to, fitting the actual situation
18 confronting pilots, the Department of Transport and
19 the Shipping Federation and all these elements into
20 the Industrial Relations and Disputes Investigation
21 Act. They could be fitted into this; they could be
22 fitted into any Act, but you would have to do a great
23 deal of detailing that you don't have to do in ordinary
24 employment.

25 MR. JACQUES:

26 Q. But they could come under the Indus-
27 trial Relations and Disputes Investigation Act?

28 A. They could, under any Act, for that
29 matter.

30 Q. Let us limit ourselves to this



1 particular one. They could come under this Act?

2 A. Yes; with an elaboration of the
3 term "employer" to include pilotage authorities as well
4 as Crown corporations; but someone would have to be
5 designated as the employer. You couldn't have the
6 kind of situation you have now where no one knows who
7 the employer is or his direct responsibility in bar-
8 gaining.

9 COMMISSIONER SMITH: I would like
10 to ask the witness a question on this point. It has
11 come to my attention through correspondence and news-
12 paper clips that there is, in remote parts of the
13 United States, I think in the deep south, a group of
14 pilots who are unionized and who carry on collective
15 bargaining. Would you have any knowledge of that
16 situation?

17 THE WITNESS: No, I wouldn't, but
18 it is entirely possible. There are a group of
19 pilots who have carried on collective bargaining in
20 the past in Canada. Canada Steamship Lines has em-
21 ployed some pilots for a long time, but there you have
22 the usual employment relationship just the same as a
23 master, or a mate, or an engineer, or a deckhand. There
24 is no difficulty there.

25 Our board has certified units of
26 employees which include some pilots, and as a matter of
27 fact in 1958 the Corporation of Port Weller group made
28 an application for certification to the Canada Labour
29 Relations Board, and it was never dealt with because
30 in the meantime, before it was withdrawn -- which was



1 In May, 1959 -- the Department of Transport had taken
2 over this group of pilots and made civil servants of
3 them. But if a case had come before the board I
4 consider that the board would have found all the diffi-
5 culties we are talking about here, because there is
6 a question of whether they are employees or whether
7 they are independent contractors, viewed from the
8 standpoint of our Act. We do not certify a unit of
9 independent contractors. Our certification relates
10 only to employees in the usual meaning of the term.

11 In the case of these units in the
12 United States I am sure some of the companies which ply
13 the Mississippi or the Gulf of Mexico must have pilots
14 who are regular employees on board ship at all times.
15 There is no difficulty there.

16 MR. JACQUES:

17 Q. What is, according to you or your
18 department the criterion to decide whether a person is
19 an employee or not? On what do you base this de-
20 cision?

21 A. The board bases its manner of judging
22 on what the distinctions in law are between an employee
23 and an independent contractor. That is, does the
24 employer have full control over the employee -- not
25 only tells him on what to do but how he can do it?

26 Q. If I were to tell you that that might precisely be
27 the case, that the master of the ship could tell the
28 pilot how to do something . . .?

29 A. Well, the authorities don't indicate
30 that that is always the case, that the captain can



1 regulate the pilot in everything he does.

2 Q. What is that?

3 A. It seems to me, from the reading of
4 legal opinions, that there is considerable doubt as to
5 whether a pilot performs duties which do not place
6 him under the control of the master at all times.

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1 Q. Are you familiar with the American
2 decisions with respect to pilotage decisions of the
3 National Labour Relations Board?

4 A. No, I can't say except I would think
5 they would have the same difficulties that our board
6 would have in determining who an employer was and
7 whether the pilots were actual employees.

8 THE CHAIRMAN: Although over there
9 the system is quite different than what we have here.
10 The whole administration of pilotage is just handed
11 over to the pilots and they look after their own
12 despatching and everything. The Authority has
13 nothing to do with regard to the collecting of money
14 and so on.

15 THE WITNESS: That would seem to
16 make them even more ---

17 THE CHAIRMAN: Free employees?

18 THE WITNESS: Something other than
19 employees if they do all that themselves.

20 THE CHAIRMAN: That is right.

21 THE WITNESS: Actually they conduct
22 the operation.

23 THE CHAIRMAN: That is right.

24 MR. JACQUES:

25 Q. They conduct the operation of des-
26 patching pilots, but once on board a vessel the
27 Association, whatever it may be, have no say in what
28 the pilots are going to do. On board a vessel the
29 pilot is under the authority of the master. That is
30 spelled out quite clearly in the American Act with



1 respect to the Great Lakes, that the pilot has the
2 conduct of the vessel or is in charge of the naviga-
3 tion of the vessel under the custody and authority of
4 the master.

5 A. I really don't know much about their
6 system.

7 Q. Let us come back to our system. The
8 pilots feel as has been mentioned several times before
9 the Commission that they are advisers to the masters;
10 they would advise the master on local conditions. In
11 fact, , and this is in the bulk of the evidence,
12 when they board a vessel they actually have the con-
13 duct of the vessel. They give all the orders to the
14 wheelsman and to the mate on watch with respect to the
15 operation, and they dock the vessel and undock the
16 vessel, but always under the supervision of the master.
17 Mind you, at times the master may not be on the
18 bridge, and may not interfere with the pilot at all,
19 but the master could, according to the evidence which
20 we have, tell the pilot where he wants to go, and
21 countermand any order the pilot has given to the
22 wheelsman or to the engine room.

23 A. Well, that may be. I can only say
24 this, that there can be a system -- there is no doubt
25 about it -- you could work out any system you like by
26 law. We could call them independent contractors if
27 they are such; employees for the purpose of that par-
28 ticular piece of legislation but you cannot do that
29 under our Act as it now stands and that is the problem
30 we were faced with.



1 THE CHAIRMAN: This is the first
2 problem we will have also. We understand this is
3 absolutely necessary that there be a good bargaining
4 system. It is also a necessity that the pilots
5 should be able to talk about their regulations and
6 talk to somebody and be able to discuss with somebody.
7 The second question is as to whether the system we
8 have now is really appropriate to good bargaining or
9 whether it is one bound to bring trouble as it is in
10 various places. It has to be a good system and we
11 have to compare the situation of what we have now,
12 whether it is good or not, and if not, we will recom-
13 mend some change.

14 THE WITNESS: Well, what we did was
15 point out the number of difficulties. We did not come
16 to any conclusion about it because the debate was not
17 continued in correspondence.

18 We have no doubt that there can be
19 a good system worked out but to incorporate the pilots
20 in bargaining under our Act, without any alterations
21 to our Act, or without creating any other legislation,
22 would give rise to a great many difficulties in the
23 definition which would utterly inhibit bargaining and
24 probably lead to more confusion than previously.

25 MR. JACQUES:

26 Q. Well, your Act under the definition
27 of the word "dispute", it could be a dispute between
28 an employer and one of his employees and an employer
29 is a person who employs one or more employees.

30 A. Are you reading from something?



1 Q. From the Industrial Relations and
2 Disputes Investigation Act.

3 A. Yes.

4 Q. Section 2, which is the interpretation
5 section.

6 A. Yes, but when you look at the Act, I
7 think it is at the end of the definition section, you
8 will see that it defines units of employees as being
9 two or more employees.

10 Q. Yes, I will read the Act.

11 "For the purposes of this Act,
12 a 'unit' means a group of employees
13 and 'appropriate for collective bar-
14 gaining' with reference to a unit
15 means a unit that is appropriate for
16 such purpose whether it be an employer
17 unit, craft unit, technical unit,
18 plant unit, or any other unit and
19 whether or not the employees therein
20 are employed by one or more em-
21 ployers."

22 A. Yes, that is true, but the governing
23 word therewith which has led the Board on many occasions to
24 turn down applications for certification which related
25 only to one employee is that the unit is -- one employee
26 is not a group of employees.

27 This, of course, is easily overcome
28 because some labour relations board have done it by
29 widening their definition of "unit" to take in one
30 employee. We are talking about the Act as it stands



1 now and not as it may be amended.

2 Q. I am talking about the Act as it
3 stands because if we are talking about amending the
4 Act we can do what we like. We can provide for what
5 we want.

6 A. That is another question. You are
7 getting into quite a different area there. That brings
8 up the question of whether under special circumstances
9 of pilots' cases they be left where they are under a
10 modified system of the Canada Shipping Act or an entire-
11 ly new Act be created for them so that this can be alter-
12 ed to suit them by a special section.

13 Q. Have you considered, or studied, I
14 should say, the question of whether the pilots might
15 not be employees of the Pilotage Authority?

16 A. Well, our departmental solicitor
17 looked into the question because he had a hand in this
18 and there was no means -- as I said, the pilot was an
19 employee in the usual sense. I think in the letter
20 to Transport you have read it was pointed out that the
21 Canada Shipping Act already refers to pilots as em-
22 ployees or an employee, and used that term.

23 Our departmental solicitor's advice
24 on that point was, "Well, that was rather ineffective
25 unless you had a definition in the Canada Shipping Act
26 concerning the employer and locating the employer."

27 In the letter to us Transport Indi-
28 cated that -- I think it is fair to construe their
29 letter as indicating that there was a good probability
30 that without trouble in the Act, the Canada Shipping



1 Act as it now stood, that pilotage could be brought
2 under the Act without any trouble at all.

3 Of course, when we examined the ques-
4 tion that didn't seem to be borne out and we raised
5 certain questions with Transport and they must have
6 agreed with us because the correspondence was not
7 continued.

8 Q. I would not assume that, but let us
9 go back to the first question. If one is to assume
10 that when you discuss the relationship between the
11 Pilotage Authority and the pilots then you no longer
12 have the problem of identifying the employer. We
13 start off with the premise that the Pilotage Authority
14 would be the employer?

15 A. Oh, well, that makes it much easier.

16 Q. It does?

17 A. Of course.

18 Q. Have you studied that problem?

19 A. Well, if your legislation defines
20 "employer"--as our contention--I think the confusion
21 in collective bargaining would have resulted from the
22 uncertainty as to who was the employer and who was
23 responsible^{but}/when you say that either the Pilotage
24 Authority or someone else is the employer of the
25 pilots for all purposes of collective bargaining, you
26 have resolved the problem to some extent and the
27 pilots know whom to go to when they bargain and whom
28 to look for for all the benefits that they want.

29 Q. Your department has never made any
30 serious study of that problem, whether the pilot is in



1 fact an employee of the Pilotage Authority? Under
2 the bylaws adopted by the Pilotage Authority, which
3 state among other things that a pilot may not under-
4 take pilotage except as directed by a local supervisor
5 and that certain expenses would be deducted from
6 pilotage dues and that sections of the bylaws provide
7 for the sharing of earnings of a district?

8 A. Well, of course ---

9 Q. These are ---

10 MR. LALONDE: Which bylaw?

11 MR. JACQUES: The Saint John, New
12 Brunswick, bylaw, which was the prototype of the by-
13 laws.

14 Q. Provide leave of absence, sick leave
15 and retirement.

16 A. We certainly looked at all these
17 things. That is why we did not, as I recall the
18 correspondence now, seem to agree with Transport that
19 the master of the vessel was an employer.

20 I would have to look at the corres-
21 pondence again. That is my impression that in the
22 letter to us Transport indicated that it would be
23 quite easy to bring the pilots under our Act because in
24 certain references in the Act, the master appeared to
25 be an employer.

26 Well, of course, if that were the
27 case we still have all the confusion attendant upon
28 how the pilots' group are going to bargain with seventy
29 or one hundred employers who employ one pilot sometimes
30 and who occasionally come to Canada and may not come



1 again for several years.

2 It is these things which dictate
3 either the necessity of having a central authority
4 whether it is the Shipping Federation or the Pilotage
5 Authority: but dealing more directly with the question
6 there, it is possible to call the Pilotage Authority
7 but under our Act, the Pilotage Authority being the
8 Minister of Transport, we would have no authority
9 to enforce collective bargaining without amendments
10 to the Act and one of these questions we asked
11 Transport is this: What do you want? Do you know
12 what you want?

13 If we are going to have all these
14 pilots together -- because from our files it is
15 clearly evident that under the present system the
16 Shipping Federation was not enamoured with collec-
17 tive bargaining.

18 Q. Was not what?

19 A. Was not enamoured with collective
20 bargaining; that the pilots themselves like the
21 present situation except they wanted some way of ad-
22 justing their pay and I think it is fair to say that
23 the Department of Transport liked the present system
24 because they wanted and they find it necessary to
25 have some control over an important navigational
26 aid of that sort; that they like the system.

27 With all these likes and dislikes
28 when you are discussing the question with Transport
29 you put it up to them 'Well, now, in the light of all
30 these circumstances do you still think that they



1 should be brought under the Act?"

2 Well, as I said, the correspondence
3 was not carried on and my assumption may be wrong but
4 it is there.

5 Q. There is another aspect of the pro-
6 blem. Surely many of these ships trading from
7 Montreal sometimes belong to the same company. You
8 could have the Manchester liners coming up or Cunard
9 or the C.P. Could they not be considered employers?

10 A. They could be, but ---

11 Q. They operate several ships.

12 A. You have to also consider the
13 physical act of inconvenience of bargaining. You
14 can't very well -- it is difficult to bargain with an
15 operation that may come only intermittently some years.
16 One case, for instance, I think the Seafarers Inter-
17 national Union attempted to bargain on a vessel from
18 Venezuela, and they tied it up. The captain signed
19 an agreement and as soon as he got out of Canadian
20 waters he tore the agreement up and the SIU asked us
21 to try and enforce the agreement.

22 It is difficult. We said we
23 couldn't undertake to enforce on a foreign company
24 an agreement which had been obtained under duress in
25 Canada.

26 THE CHAIRMAN: Don't you think there
27 would be confusion if the pilots were to bargain with
28 Cunard and then begin to bargain with the Canadian
29 Pacific and then turn around and bargain with some
30 other company and maybe have ten, twelve, fifteen or



1 twenty different tariffs?

2 THE WITNESS: They would not have
3 the time nor the resources for that kind of bargaining.

4 MR. JACQUES:

5 Q. We may proceed to Question No. 5.

6 THE CHAIRMAN: Excuse me. Mr.
7 Brisset may have some questions.

8
9 CROSS-EXAMINATION BY MR. BRISSET:

10 Q. Mr. Wilson, in the course of your
11 evidence there has been reference to the Shipping
12 Federation as an employer. I just want to make sure
13 that it is well understood that in spite of the use of
14 the words the Shipping Federation is not an actual
15 employer of the labour but represents the employers
16 who will employ labour. Is that not your understand-
17 ing?

18 A. Oh, yes, of course. When our
19 board certifies -- issues certification affecting the
20 Shipping Federation of Canada it is quite clear indeed
21 it is representing the companies who are engaged --
22 who are involved in the proceedings in so far as they
23 declare themselves willingly to be involved in the
24 proceedings.

25 Q. I have not had a chance to read ---

26 A. However, I would add to that, sir,
27 that when we are dealing with the Shipping Federation,
28 we consider them employers because they speak with
29 such authority at times.

30 Q. I have not had a chance to read the



1 summary of disputes and developments, and so forth,
2 involving labour relations that has been put in, but
3 you have spoken of the difficulty in marrying the
4 concept of the pilot as an employee under the Act,
5 which you administer, and the Canada Shipping Act.
6 Is not one of the difficulties the fact that under
7 the Canada Shipping Act the pilots cannot refuse to
8 work? In other words, they cannot strike? Under
9 the Canada Shipping Act it is illegal for a pilot to
10 refuse to work; while under your Act, the normal
11 labour situation, if you go through what is provided
12 under your Act, the right to strike is recognized.

13 THE WITNESS: After going through
14 the various procedures prescribed by the Act.

15 MR. BRISSET:

16 Q. Is that not possibly one of the
17 difficulties?

18 A. You always have difficulty in a
19 strike action where employees are hired from day to
20 day and intermittently. We have that trouble and I
21 am sure the Shipping Federation does also, with respect
22 to longshore units where a man is hired at the com-
23 mencement to work each day and he doesn't choose to
24 show up. It takes a fair amount of proof to estab-
25 lish that he is on strike.

26 It is not the same as in the more
27 usual type of relationship where employment is con-
28 tinuous until notice is given.
29
30



1 Q. Are there, Mr. Wilson, classes of
2 employees who are considered to be rendering a public
3 service and who therefore are not permitted to refuse
4 work or to go on strike that come under your own
5 legislation?

6 A. We have employees of certain Crown
7 corporations under our legislation, yes, but they are
8 defined in the Act as employees unless they are
9 specifically excluded.

10 Q. Therefore they have the right to
11 strike after having gone through all the preliminary
12 procedures?

13 A. They have and they have exercised
14 that right, too.

15 Q. So actually there are really no
16 employees in Canada except for the pilots who are not
17 permitted to strike because the right is taken away
18 from them by legislation?

19 A. Oh, I would not agree with that.

20 Q. Are there others?

21 A. There are a number of civil servants.
22 It is true that there is nothing that says they cannot
23 go on strike, but it is pretty well recognized that
24 they do not go on strike. They are not covered by
25 our Act; they are covered by the Civil Service Act
26 and that Act does not deal with strike action or
27 collective bargaining.

28 It may be of interest to you to try
29 to relate the pilot situation and the pilotage authority
30 to whatever new collective bargaining legislation for



1 civil servants or public servants comes out of the
2 present discussions. Whether they will ignore the
3 question of strike action as being not worthy of
4 mention or whether they will specifically prohibit
5 strike action in that new legislation, I do not know;
6 but there is a case for either if one wishes to argue.

7 I do not think that pilots are
8 unique in not having the right to strike in Canada.
9 There are a large number of policemen and firemen
10 whose bargaining or rate-fixing is determined by
11 arbitration and they do not have the right to strike.

12 MR. LALONDE: And the lawyers, too!

13 MR. BRISSET:

14 Q. You have spoken of certain pilots,
15 employees of the Canada Steamship Lines, that have
16 been recognized under your legislation and who have
17 exercised collective bargaining rights. Is it not
18 a fact that in these cases what these pilots were
19 bargaining for was their actual, let us say, seasonal
20 earnings or monthly pay or weekly pay?

21 A. Well, of course, that bargaining
22 of those pilots took place in association with deck
23 officers and I would assume that whatever the deck
24 officers settled for was satisfactory to the pilots
25 too.

26 Q. And it was so much per month or so
27 much per hour?

28 A. Yes, the usual employment relation-
29 ships.

30 Q. In other words, although it may be



1 elementary, let us suppose that I am a plumbing con-
2 tractor and I have ten plumbers in my employ. They
3 will come to me and say: "We want \$5 an hour," and I
4 will say to them: "I am ready to give you \$4 an hour."
5 Then you start the process of bargaining and eventually
6 either you agree on something in between or you get
7 arbitration, and finally they accept \$4.50 an hour.
8 That is the normal process, is it not?

9 A. That would be except that it would
10 not occur in this situation because, as I recall it,
11 the pilots were recommended by the Canadian Merchant
12 Service Guild and they were bargaining with the other
13 group and they presumably made their arrangements for
14 salary differentials within the group. Of course, it
15 is entirely possible that if the pilots were not
16 satisfied with their representation by the organiza-
17 tion, whichever it was -- the Canadian Navigators'
18 Federation or other organization -- and desired to
19 seek certification as a craft unit from the Board
20 apart from the deck officers, they could have done
21 so, and I think that they are sufficiently a craft
22 that the Board would have established them as a
23 separate unit. Then they could have conducted their
24 bargaining apart altogether from the deck officers,
25 but that never happened.

26 Q. However, in that bargaining, and to
27 use the same illustration as we used before, they would
28 come to me, the plumbers, my employees, would come to
29 me and say: "We want you to charge \$10 an hour for
30 our service when we go for instance to a house in



1 Westmount (there are big houses there) and we want
2 you to charge \$5 when we go to another part of the
3 city." But when I ask them: "Well, how much do you
4 want to earn actually?" they reply and say: "Well,
5 that is no concern of yours; we do not know what we
6 want to earn."

7 A. But they always do know what they
8 want to earn because they know how much they work.

9 Q. Well, would you at least agree that
10 it is an abnormal way of going through collective
11 bargaining?

12 A. Well, usually when a man bargains in
13 the usual sense he seeks a wage increase. He knows
14 what he made last year and he knows, if he gets what
15 he has asked for, what he is going to earn the next
16 year.

17 Q. That is the normal way of doing it?

18 A. The normal way. I would think that
19 perhaps even pilots would have an eye on their gross
20 for the year in going after a wage increase.

21 Q. We have called that here at times a
22 target income. You would expect that they would have
23 in mind a target income when they come to the bar-
24 gaining table. Is that what you want to convey?

25 A. Yes, that is true, except that they
26 would also anticipate whether the next season was
27 going to be busier than the last. That would enter
28 into their calculations and they would also take into
29 account, I would think, the availability of pilots
30 for the work which they were doing, which would also



1 have an effect on their income.

2 Q. In other words, the workload would
3 also be a factor?

4 A. And the number of people who would
5 be seeking that work.

6 MR. BRISSET: Thank you.

7
8 CROSS-EXAMINATION BY MR. LALONDE:

9 Q. Mr. Wilson, may I draw your attention
10 to some parts of Exhibit 1361? I would like you to
11 refer to Part II of Exhibit 1361. You have a letter
12 there at the beginning of that memo from Mr. Paul
13 Gerin-Lajoie to Mr. J. E. Matheson. Do you know how
14 the department came into possession of that copy of
15 that letter?

16 A. Well, I would assume it was as the
17 result of the arrangements or bargaining which had been
18 reached between the newly-formed Great Lakes Association
19 and the Shipping Federation. While I cannot say
20 exactly how it came into our possession we do get sent
21 from time to time copies of correspondence exchanged
22 between trade unions and employers or associations
23 representing employers merely to keep us informed of
24 the collective bargaining situation or whatever other
25 situation there is. From what I can see it was
26 merely information because at that time there had
27 not been any incidents that would seriously concern
28 the Industrial Relations Branch of the department.

29 Q. I am referring you to the events in
30 1958 when there were difficulties between the Shipping



1 Federation of Canada and the Great Lakes Pilotage
2 Association. I see a note here and in brief it
3 says that on May 22nd the Director of Industrial
4 Relations and one of his officers met with officials
5 of the Shipping Federation. The Shipping Federation
6 of Canada officers stated that they opposed the grant-
7 ing of conciliation services. I understand you were
8 present at that meeting?

9 A. Yes, sir.

10 Q. Do you remember what were the reasons
11 of the Shipping Federation of Canada to oppose con-
12 ciliation services which your department was offering?

13 A. I think it was the usual reasons we
14 have been talking about, that there was not any bar-
15 gaining relationship. Secondly, there was not any
16 collective agreement in a sense that it would allow
17 under our legislation the making of an application
18 for mediation and conciliation services. Thirdly,
19 I would think also it was the question of the status
20 of the pilots and employees under our legislation.

21 Q. In view of this refusal your depart-
22 ment decided not to proceed with any conciliation in
23 view of the fact that one party had refused concilia-
24 tion?

25 A. I think if you look at the letter
26 that I wrote there are a number of reasons given, a
27 number of reasons why the Minister of Labour should
28 not grant mediation in addition to those I have men-
29 tioned. I think we have indicated that the strike
30 in 1957 and 1958 had commenced without any reference



1 to us for mediation services and that if that was the
2 case and if they were employees they were in breach
3 of the Act under which they sought mediation in
4 coming to us long after they had commenced their
5 action against the Shipping Federation.

6 I might say we were not unwilling
7 to grant mediation. I think that is clear from our
8 conversations with the various people involved. And
9 we would have granted mediation if everyone had been
10 willing that we do so.

11 MR. LALONDE: Thank you.

12
13 DIRECT EXAMINATION BY MR. JACQUES:

14 Q. Question No. 5: Is the department
15 aware of any proceedings before the Canada Labour
16 Relations Board affecting pilots, and, if so, give
17 particulars? Of course, other than as stated in
18 the exhibits to which we made reference a while ago.

19 A. No. That is the very short memoran-
20 dum which summarizes the activities before the National
21 Labour Relations Board as they related to pilots, and
22 you will see that they were very little.

23 Q. And this is included in Exhibit
24 1361?

25 A. That is right; that is true.

26 MR. JACQUES: Thank you.

27
28 CROSS-EXAMINATION BY MR. LALONDE:

29 Q. I notice that in this summary you
30 refer to the Port Weller-Sarnia pilots and it is stated



1 that the district was taken over by the Department
2 of Transport and permission to withdraw the application
3 was granted?

4 A. That is right.

5 Q. We had in evidence that the pilots
6 of that district are prevailing rate employees.

7 A. Well, as I understand it, sir, they
8 are under the Civil Service Act for all purposes except
9 pay and their pay is determined on a prevailing rate
10 basis.

11 Q. Would this apply to working hours
12 and all that? Would they come under the Civil
13 Service Act?

14 A. I really do not know about that. I
15 would think that it would be pretty difficult to
16 regulate the hours of pilots in that sense as civil
17 servants, unless they were granted overtime and that
18 sort of thing.

19 Q. Coming under the Civil Service Act
20 they are specifically excluded from the scope of the
21 Industrial Relations and Disputes Investigation Act?

22 A. That is true.

23 MR. JACQUES: And you said that
24 prevailing rate employees come under the Civil Service
25 Act?

26 THE WITNESS: No, prevailing rate
27 employees come under the prevailing rate employees
28 general regulations. But in this case, as I under-
29 stand it, Mr. Baxter is here and he can give you
30 better information than I can in this connection.



1 As I understand it, the pilots are under the Civil
2 Service Act for all purposes except pay and their
3 pay is fixed under the Prevailing Rate Employees
4 General Regulations.

5 MR. JACQUES: Thank you very much,
6 Mr. Wilson.

7
8 ---The witness withdrew.

9 THE CHAIRMAN: Before taking a fresh
10 witness we are going to adjourn for ten minutes.

11
12 ---Short recess.

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1 MR. JACQUES: Q. Would you explain
2 a statement which you have made, something to the
3 effect that if the Pilotage Authority is the Minister
4 then both the Minister and the Pilots could not come
5 under the Industrial Relations and Disputes Investigation
6 Act. Is that correct?

7 A. That is true.

8 Q Is this under section 53 of the
9 Act?

10 A. Well, in the Act, of course, section
11 53 covers the types of employment which come within
12 the scope of the Act, and navigation and shipping is one
13 of them, but section 55 excludes Her Majesty in right
14 of Canada or employees of Her Majesty in right of
15 Canada. Section 54 brings under the Act any
16 corporation established to perform any function or
17 duty on behalf of the Government of Canada, and in
18 regard to employees of such corporations,
19 "...except any such corporation and the employees
20 thereof that the Governor-in-Council excludes under
21 Part 1 of the Act..." So on a construction of this
22 it would seem to me that the Minister of Transport
23 as the Pilotage Authority would not come within the
24 Act.

25 Q. But if I could successfully argue
26 that the Minister of Transport, qua Pilotage
27 Authority, is a corporation then he could come under
28 the Act?

29 A. If you could argue that he was a
30 corporation within the meaning of section 54 and if



1 you could maintain that successfully he would be under
2 the Act in respect of these matters covered by the
3 Pilotage Authority, but the Minister of Transport
4 generally would not be under the Act.

5 Q. Agreed; and if I could also argue
6 that the Pilotage authorities which are not the
7 Minister are corporations within the meaning of section
8 54 they would come under the Act also?

9 A. Well, in my opinion, as I have said,
10 if you could argue successfully and maintain your
11 argument that it is a Crown corporation within the
12 meaning of section 54, that is all there is to it.

13 MR. JACQUES: Thank you.

14 MR. LALONDE: My Lord, I didn't raise
15 any objection when my friend was explaining his
16 concept of the relationship between masters and pilots,
17 and there were some points raised by the witness in
18 which there is room for legal argument.

19 THE CHAIRMAN: Yes; there is room for
20 quite a lot there.

21 MR. JACQUES: I fully realize that,
22 but for the purpose of putting questions to the
23 witness I had to start somewhere.

24 I will call Mr. Baxter.

25
26 ROY BAXTER, sworn

27
28 DIRECT EXAMINATION BY MR. JACQUES:

29
30 Q. You are Mr. Roy Baxter?



1 A. Yes.

2 Q. And what is your position with the
3 Department of Transport?

4 A. Director of Administration and
5 Personnel.

6 Q. The preceding witness made a statement
7 which rather puzzled me. He said that pilots in the
8 Port Weller area came under the Civil Service Act
9 except for pay purposes which were carried on under
10 the Prevailing Rate Employees Regulations?

11 A. No. The pilots in the Port Weller-
12 Sarnia area are not under the Civil Service Act; they
13 are under the Prevailing Rate Employees, Regulations.

14 There are three sets of regulations or
15 authorities governing employment in government service.
16 One is the Civil Service Act, another is the
17 Prevailing Rate Employees, Regulations, and the other
18 is the Ships Officers and Crews Regulations.
19 The latter two are designed, developed and administered
20 by Treasury Board, and the first, the Civil Service
21 Act, by the Civil Service Commission.

22 Q. Under section 7 of the Financial
23 Administration Act, I believe, which is the authority
24 for the adoption of these regulations?

25 A. Yes, this is right.

26 MR. JACQUES: I thought, My Lord, I
27 would just clarify this point with Mr. Baxter.

28 Mr. Baxter will be available at some
29 future date to discuss the employment of pilots in
30 the Great Lakes District when we discuss Great Lakes



Pilotage.

THE CHAIRMAN: I see, Mr. Jacques.

MR. JACQUES: I now call Mr. Johnstone.

HARRIS S. JOHNSTONE, sworn

DIRECT EXAMINATION BY MR. JACQUES:

Q. You are employed by the Department of Labour?

A. Yes.

Q. And in what capacity?

A. Presently Director of Labour Standards Branch.

Q. I believe that you have been delegated to answer questions 1,2 and 3. Question No. 1 is: What policies and procedures are followed by the Department in determining rates of pay for those employees who are governed by the Prevailing Rates of Pay, General Regulations?

A. The policy and the procedures are set forth in the Prevailing Rate Employees General Regulations.

The two key provisions are the definition of the "employee" and the method of determining the rate of pay. The definition of the "employee" is in section 2(1)(h). It defines an "employee," for the purpose of the regulations, as a "...person whose remuneration is based on rates of pay prevailing in the appropriate areas in Canada which are comparable



1 to the class of work he does," and the regulations
2 also go on to say, in section 5 (1) that
3 "...the rate and conditions of pay, not including
4 additional remuneration by way of supervisory
5 differentials for employees in each unit of the public
6 service, shall be authorized by Treasury Board on
7 the basis of a recommendation of the Department of
8 Labour."

9 Q. And how did you go about making
10 the recommendation to Treasury Board? We are told
11 that the rates of pay for pilots in the Port Weller
12 area is \$1,380 per month, and that the rate of pay
13 for the pilots in the Goose Bay area is \$660 per month.
14 How do you proceed in arriving at this figure?

15 A. When we receive a request from the
16 Department -- in this case, the Department of Transport
17 -- we ascertain what are the rates paid -- the amount
18 of money earned -- by persons outside the government
19 employment who do work similar to the work done by
20 the persons involved in the request from the Department.

21 Q. And in this particular case, with
22 regard to the Port Weller pilots, would you tell us
23 the detail of the work which you did to arrive at
24 that figure?

25 A. Well, we obtained from the
26 Department of Transport the earnings and the other
27 conditions of the earnings of what we call the self-
28 employed pilots in that district and in District No. 1,
29 and we also follow the same procedure with respect to
30 government pilots employed at Goose Bay; and we



determined the earnings of the self-employed pilots in the region of St. Johns, Newfoundland, and studied them and arrived at our recommendation after this study.

MR. JACQUES: Thank you.

THE WITNESS: Are you on the first question yet?

MR. JACQUES: The solicitors appearing for the other parties might wish to put questions to you with regard to the first one.

MR. LALONDE: I think I, at least, am going to wait until the three questions are asked, because they are pretty well all tied in together.

MR. JACQUES: I have no objection to that.

Q. Question No. 2 is: Are these policies and procedures followed in determining the rates of pay to be paid to the Canadian pilots who are Prevailing Rate employees...

A. I have already dealt with that in my previous answer.

Q. Your previous answer covers question No. 2?

A. You led into this by a question on question No. 1.

Q. And would you indicate just what your Department understands the work of the pilot to be?

A. We understand that ships' pilots are responsible for the safe conduct of the ship through



1 certain waters, including locks and channels. I
2 believe they are also supposed to report to their
3 superior officer, who might be the District Supervisor
4 of Pilots, any shipping casualty to the vessel for
5 which they are responsible, or any violation of marine
6 laws by others and damage to aids to navigation.
7 But their primary responsibility is the first one I
8 enunciated.

9 Q. And with respect to Question No. 3
10 there is just one point to be covered: When you
11 made your calculations to set wages for the Port Weller
12 pilots did you take into account the earnings of the
13 American pilots in the Great Lakes Basin?

14 A. No.

15 Q. You never took into account the
16 earnings of citizens on the other side of the border?

17 A. No. We don't know their earnings.

18 Secondly, the regulations require us to
19 base our rates of pay upon rates prevailing in the
20 appropriate area in Canada.

21 Q. Yes; in Canada; but if the American
22 pilot actually is earning his money in Canada, which
23 he does in piloting between Port Weller and Port
24 Colbourne, he is actually earning his money in Canada,
25 and the rates set by the Pilotage Authority are
26 applicable to both countries?

27 A. Well, we have never been in
28 possession of such information, on the earnings of
29 American pilots, to enable us to make a recommendation;
30 and the earnings in the other provinces are appropriate



1 here in Canada.

2 On the matter of the earnings of American
3 pilots around all the areas in Canada, they do cross
4 the international boundary, I suppose, out in the
5 middle of the stream, and in the middle of the river,
6 and in the middle of the lake.

7 Q. By the same token, the earnings of
8 the Canadians straddle the water also.

9 A. Yes.

10 Q. When you set up the wages for
11 District No. 2 did you take into account the earnings
12 in District No. 1, the adjoining district?

13 A. We looked at those earnings. You
14 mean District No. 1, from St. Regis to Kingston?

15 Q. Yes?

16 A. Well, we looked at those earnings
17 as well -- the earnings in District No. 2 and
18 District No. 3; primarily we based it upon District
19 No. 2.

20 Q. And solely Canadian?

21 A. Yes.

22 Q. Did you take into account the
23 earnings of masters of lake boats?

24 A. No.

25 Q. Nor mates of lake boats?

26 A. No.

27 Q. Did you take into account earnings of
28 pilots in other pilotage districts such as Quebec-
29 Escoumains, or Quebec-Montreal?

30 A. Not specifically. We studied that



1 information but it wasn't the principal basis of our
2 recommendation.

3 Q. When you refer to the "prevailing
4 rates in an area," what determines the area?

5 A. This area is deemed to be the area
6 closest to the employment of the government employee
7 in question -- the appropriate area in which you can
8 obtain adequate wage rate information.

9 Q. But there are no physical limits set
10 to this?

11 A. No.

12 Q. How did you set these limits?
13 You must set a limit somewhere?

14 A. Well, in this case, of course, we
15 used the pilotage district areas and we obtained
16 earnings information from the Department of Transport
17 on the activities of self-employed pilots.

18 Q. That prevailed in that district?

19 A. Yes.

20 Q. But you disregarded completely the
21 earnings in the adjoining district?

22 A. As I say, we studied the information
23 from Districts 1 and 3, but we based it particularly
24 on District 2.

25 Q. But what effect would this study
26 have if you made your study and disregarded completely,
27 and in your study did not take into account, the
28 earnings of the adjoining districts?

29 A. We had the information as to trends
30 and as to the approximate effect upon the trend of the



1 wage level for ships' pilots in the broader general
2 area.

3 Q. Could we say, then, that it was a
4 factor in determining the rate which you suggested to
5 Treasury Board?

6 A. Yes, it was a factor, but not the
7 important factor.

8 Q. Not the important factor?

9 A. No.

10 MR. JACQUES: Thank you.

11 MR. LALONDE: Mr. Johnstone, I under-
12 stand that you were provided with information by the
13 Department of Transport when the request was made for
14 an increase in salaries for pilots. Do you have
15 these documents with you?

16 THE WITNESS: Yes, I have the statement
17 with me of earnings.

18 MR. LALONDE: You have with you the
19 documents that were referred to you by the Department
20 of Transport?

21 THE WITNESS: The statement of earnings,
22 yes.

23 MR. LALONDE: Do you have that in your
24 file before you?

25 I notice that you have in your file a
26 document entitled "Comparable Statement of Pilots'
27 Earnings on Record"...

28 My Lord, I don't think that these
29 documents need to be filed. They are similar to those
30 already filed. They show the gross revenue and the



1 number of effective pilots, etc.

2 Mr. Johnstone, how did you use this as a
3 basis for comparison? Did you look at the net
4 earnings per effective pilot? Is that what you would
5 use?

6 THE WITNESS: Yes; we looked at net
7 earnings for effective pilots and then we have to relate
8 that to the other conditions of employment of the
9 government pilot as compared to the earnings conditions
10 of the self-employed pilots.

11 The government pilots, of course, have
12 certain fringe benefits provided in addition to their
13 monthly salary, which the self-employed pilots would
14 have to provide for themselves.

15 MR. LALONDE: Then, how much do you
16 assess these fringe benefits at?

17 THE WITNESS: Well, we estimated that
18 the vacation leave of two weeks is worth 4%; that
19 the statutory holidays are worth 3%; sick leave, 2%;
20 special leave, 1%; that is 10%.

21 MR. LALONDE: 10%. Do you have any
22 provision for pension fund contribution?

23 THE WITNESS: No, we haven't evaluated
24 that, although we might need to.

25 I understand that the government-employed
26 pilots can elect to contribute to superannuation,
27 and after the first year many of them do so.

28 MR. LALONDE: That would represent what
29 -- 6½%; is that it?

30 THE WITNESS: The contribution now for



1 males, yes.

2 MR. LALONDE: I understand that these
3 proportions you have given apply to people employed
4 on a seasonal basis, or, at least, for an 8-month
5 period; is that correct?

6 THE WITNESS: Yes. Our understanding
7 is that the Government employed pilots are entitled
8 to all fringe benefits in proportion to the time they
9 are employed. I believe this is so spelled out in
10 the general regulations.

11 MR. LALONDE: And I understand you have
12 to do with other employees in the government. What
13 is the rate of the fringe benefits in connection with
14 salaries in the government? Would you calculate it
15 including governmental contribution to pension fund?

16 THE WITNESS: I don't really understand
17 your question, Mr. Lalonde. When we recommend rates
18 of pay for ordinary prevailing rate employees in
19 government departments and agencies our recommendations
20 are based upon rates of pay in private employment,
21 which rates of pay are usually hourly, weekly, or
22 monthly; and in private employment those employees
23 also receive fringe benefits of varying degrees.



1 In private employment these employees
2 also receive fringe benefits in varying degrees and so
3 we do not attempt to evaluate and place a price on
4 these fringe benefits in private employment for the
5 purpose of relating them to the fringe benefits given
6 to the government prevailing rate employees.

7 Q. My question did not have reference
8 to the prevailing rates as the particular problem with
9 which we are concerned now. My question was more of
10 the type of what, for instance, in your own case would
11 be the percentage of fringe benefits contributed by
12 the government, being the employer, in proportion to
13 your total salary in a year? Would it be 15 per
14 cent or 20 per cent?

15 A. I have not computed that.

16 Q. You have no idea. Now, I may have
17 misunderstood you but I think you said it twice that
18 in establishing these rates of pay for District 2
19 pilots you would base your/^{self}substantially on District 2.
20 I may have misunderstood you there but ---

21 A. District 2 is ---

22 Q. Port Weller-Sarnia?

23 A. Port Weller-Sarnia.

24 Q. Yes, you had a request for an increase
25 in pay from that district. District 2 is the same as
26 Port Weller-Sarnia.

27 A. We have the earnings of the pilots,
28 the self-employed pilots in District 2 which is
29 Port Weller-Sarnia.

30 Q. You have the earnings of the self-



1 employed pilots in District No. 2. Yes. I notice
2 Port Weller-Sarnia is the same as District No. 2.
3 The requests for an increase in salaries that you
4 received were concerning these particular pilots?

5 A. The employed pilots.

6 Q. The employed pilots. Do I under-
7 stand you correctly that you used those statistics
8 here provided by the Department of Transport as if
9 they were relating to self-employed pilots?

10 A. After we had examined them and
11 evaluated them for the fringe benefits and so on.

12 Q. Do you use as terms of reference
13 what appears here as earnings in Port-Weller, District
14 No. 2? I must say this is according to the answers
15 you gave before. I would like to be quite sure
16 about that.

17 THE CHAIRMAN: If you would prefer
18 to have this question postponed a little.

19 THE WITNESS: Yes, I would like to
20 consult my colleague.

21 MR. LALONDE:

22 Q. You may consult him now, if you
23 wish.

24 THE CHAIRMAN: We will adjourn for a
25 few minutes to let you consult your colleagues.

26 THE WITNESS: Thank you.

27 ---Short recess.
28
29
30



1 ---Upon resuming.

2
3 BY MR. LALONDE:

4 Q. Mr. Johnson, you were saying to the
5 Commission that in establishing rates you were com-
6 paring the earnings of self-employed pilots in District
7 No. 2 with the requests made by the prevailing rates
8 employees in that district; is that right?

9 A. The request was made by the Department
10 of Transport.

11 Q. Yes. Is that correct?

12 A. The comparisons that we made to
13 recommend rates of pay in the Port Weller-Sarnia Dis-
14 trict were based upon the earnings of the self-employed
15 pilots in the Cornwall-Kingston District.

16 Q. Yes?

17 A. If I may explain we have not been
18 using district designations like Cornwall-Kingston.
19 We have been using districts 1, 2 and 3. I was
20 confused by that.

21 Q. So you referred to the Cornwall-
22 Kingston district. In your previous testimony you
23 said you had referred to self-employed pilots in
24 District No. 2, that is Port Weller-Sarnia. Did you
25 use any such figure at all?

26 A. No, that was incorrect.

27 Q. That was not correct?

28 A. No.

29 Q. Now you said that you did not have
30 the earnings of the American pilots in District No. 2,



1 that is Port Weller-Sarnia. Did you know that the
2 Department of Transport had those figures?

3 A. The Department of Transport has
4 referred to those figures but not in detail, not in
5 sufficient detail for us to use them.

6 Q. Did you ask for the details about
7 earnings of these American pilots in District No. 2?

8 A. No, I don't recall that we did.

9 Q. And the Department of Transport did
10 not provide you with details about that?

11 A. That is right.

12 Q. Now, when you work on salaries, rates
13 of pay do you take into account the workload at all?
14 When you make a comparison, let us say, like in the
15 present circumstances, you make a comparison between
16 pilots of two different districts; do you take into
17 account the workload?

18 A. By workload you mean the hours
19 worked?

20 Q. Yes.

21 A. We take into account the earnings
22 but we were informed that the hours of the self-
23 employed pilots varied a great deal and so did the
24 hours of the government employed pilots, and so when
25 we made our recommendation it was for a monthly rate
26 as remuneration for the workload at the time; that
27 is including the necessary overtime.

28 Q. What do you mean by that? What
29 did you have in mind when you made that specific
30 recommendation? Let us say you decided to make a



1 recommendation to increase from \$1340 to \$1380 a month.
2 What were you referring to in terms of monthly work-
3 load?

4 A. We didn't know the exact hours but
5 we were informed that the government employed pilots
6 worked varying hours from probably 30 to 50.

7 Q. Hours in the week?

8 A. Yes, approximately.

9 Q. Were you informed as to what was
10 meant by "30 to 50 hours a week"?

11 A. Well, we understand that to be the
12 hours where they are on duty directing the ship or
13 giving instructions to the master.

14 Q. Is this all the information you ob-
15 tained or you got as to what was meant by "30 to 50
16 hours a week"?

17 A. Well, that is the information we
18 obtained from the Department of Transport as to the
19 hours that they worked.

20 Q. I understand that the Department of
21 Transport did not provide you with any specific
22 figures as to the total amount of hours worked, what-
23 ever that may mean, by the pilots in the previous
24 years?

25 A. The year previous to our recommen-
26 dation?

27 Q. Yes.

28 A. Yes, I believe that was the figure
29 I quoted to you.

30 Q. Yes. Do you have anything in your



1 file which would show the total number of hours on
2 assignment, let us say, for pilots in District No. 2
3 in the year previous to your recommendation?

4 A. No, I don't believe we have that
5 information.

6 Q. You did not have that information.
7 Did you request that information from the Department
8 of Transport?

9 A. Well, when the initial request was
10 received in 1960, I think it was, for a recommended
11 rate for the Port Weller-Sarnia area, they did give
12 an estimate of the hours that the pilots would be
13 expected to work.

14 Q. That they would be expected to work?

15 A. Yes, they anticipated they would be
16 required to work. I don't know what that figure is.
17 That is back four years ago.

18 Q. Was it in writing or verbally?

19 A. I believe it was in a letter.

20 Q. Would you not have that letter in your
21 file?

22 A. I would not have it here.

23 Q. Would you mind checking this matter
24 and finding out whether you have still got that letter?
25 Would it help you if I were to say that this letter
26 stated that they foresaw -- it was proposed that
27 they would have a 40-hour or 50-hour week. Would
28 that ring a bell?

29 A. You are referring to the letter in
30 1950?



1 Q. Yes.

2 A. It could be. I seem to recall some
3 such figure.

4 Q. Anyway, it would not be a total
5 figure for the year and it certainly was not ---

6 A. It would be the weekly figure.

7 Q. Excuse me.

8 A. It would be the weekly figure.

9 Q. And it would certainly not be a
10 figure for a year previous, that is a real figure?

11 A. Well, the letter of 1960 I believe
12 was in reference to proposed employment.

13 Q. Yes.

14 A. Let me see. Our recommendation first
15 for the Port Weller-Sarnia area was in 1959. I don't
16 know whether the letter that we are referring to,
17 whether the estimate of the weekly hours that was
18 made referred to 1959 or 1960. I cannot say at
19 the moment.

20 Q. Well, then, would you mind finding
21 out if you have this letter and producing it before
22 this Commission if you find it, maybe this afternoon?

23 A. Yes.

24 Q. And between that time and the time
25 you made your revision in 1963 -- is it the latest
26 revision?

27 A. The latest revision is 1964.

28 Q. Yes?

29 A. We have had revisions in -- we set
30 the rate -- we recommended the first rate in 1959.



1 Another rate in 1960. A change in 1961, a change
2 in 1962 and a revision in 1964.

3 THE CHAIRMAN: This is automatic.
4 You do this automatically?

5 A. We were requested to by Transport.

6 Q. Before we come to the details of
7 these requests, am I right in stating that you did
8 not have through all that time any figures from the
9 Department of Transport giving the actual number of
10 hours worked by the Port Weller-Sarnia pilots? Is
11 that correct?

12 A. Not actually, no, an estimate.

13 Q. And did you obtain this estimate in
14 writing or verbally?

15 A. It is in writing and in some cases
16 verbally.

17 Q. Would you bring forward the various
18 cases where these documents were provided to you in
19 writing, that information was provided in writing?
20 Did you obtain this information every time there was
21 a request for an increase?

22 A. I don't believe so.

23 Q. You don't believe so. Now, when
24 you proceeded to the latest revision, to take that one,
25 you worked therefore on a basis of an average weekly
26 workload of -- how much again?

27 A. Well, the question of hours really
28 didn't come up. We were interested in earnings
29 based upon time.

30 Q. I see, based upon time?



1 A. Based upon time, that is earnings
2 per month or per year

3 Q. And this then had no reference at
4 all -- you had no reference to the actual workload,
5 whether they worked ten hours a week or eighty hours
6 a week?

7 A. You mean the government pilots?

8 Q. Yes.

9 A. No, we were working on the estimate
10 they gave us that the hours were estimated to be so
11 much on an average.

12 Q. And at the latest revision do you
13 know what the estimate was, as it was given to you by
14 the Department of Transport?

15 A. I have not the latest information
16 on that.

17 Q. Would you please get it?

18 A. Yes.

19

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1 Q. Now obviously if you want to make a
2 comparison between District 1 and District 2 pilots,
3 District 1 being the self-employed pilots and District
4 2 being the government employed pilots, would it not
5 be normal in assessing what salary should be paid to
6 pilots, to government employed pilots, in District
7 No. 2, you would take into account not only the earn-
8 ings of self-employed pilots in District No. 1 but
9 also their workload?

10 A. You mean by "workload" their hours?

11 Q. Yes.

12 A. Well, we would certainly need to
13 know the hours if we were recommending an hourly rate,
14 but our rate was a monthly recommended rate and there
15 was not the same necessity to pinpoint the hours as
16 there would be in the case of an hourly rate recom-
17 mendation.

18 Q. Am I correct in stating that the
19 Department of Transport did not provide you with
20 hours worked in District No. 1?

21 A. By the self-employed pilots?

22 Q. Yes.

23 A. It is not on the statement given us.

24 Q. No.

25 A. Which you saw?

26 Q. Yes.

27 A. I believe we did inquire about it and
28 we may have some memos on file about the estimate, but
29 I do not believe we have specific information on the
30 hours worked day by day and week by week by the self-



1 employed pilots.

2 Q. There again would you check on what
3 you have in that respect in your files?

4 A. Yes.

5 Q. Is it fair to conclude that when you
6 arrived at the salary for District No. 2 pilots you
7 merely took into account the earnings in District No. 1
8 and the fringe benefits which the District No. 2 pilots
9 had as government employees?

10 A. Yes.

11 Q. That is correct?

12 A. Yes.

13 Q. You referred to various adjustments
14 almost every year. Would you mind telling the Com-
15 mission what these adjustments were?

16 A. These are our recommendations which
17 go to Treasury Board. Treasury Board sets the rate.
18 You want them for the Port Weller-Sarnia district?

19 Q. Yes.

20 A. In 1959 we recommended \$950 a month.
21 I will amend that by saying January of 1959 we recom-
22 mended \$950. In January, 1960, we recommended \$1200.
23 In February, 1961, we recommended \$1340 a month. In
24 May, 1962, we recommended \$1380 a month. In April,
25 1964, we recommended \$1425 a month. I believe all
26 of those recommendations were approved by Treasury
27 Board.

28 MR. LALONDE: Yes.

29 MR. JACQUES: What was the basis for
30 recommending these increases?



1 THE WITNESS: The same basis as
2 originally -- the earnings and the valuation of the
3 earnings in District 1 -- Cornwall-Kingston.

4 MR. JACQUES: And again regardless
5 of the number of hours, regardless of workload?

6 THE WITNESS: Yes. We did not
7 pinpoint the hours in either case. We estimated
8 that the government pilots would be working about the
9 same hours as the self-employed pilots, but we had no
10 specific data on that.

11 MR. JACQUES: But you do not know?

12 THE WITNESS: No. We discussed
13 this matter of hours with Transport officials.

14 MR. LALONDE:

15 Q. And the information you obtained is
16 what you have related in your evidence today?

17 A. Yes.

18 Q. Except what you might find in your
19 files and you will produce?

20 A. That is right.

21 Q. Let us take the latest increase.
22 Do you have a note of when you received the request
23 from the Department of Transport for a revision in the
24 rate? What was the first date when that request
25 was made to you from the Department of Transport in
26 connection with the 1964 rates?

27 A. Their letter is dated February 1964.

28 Q. And when was your recommendation put
29 forward?

30 A. Our recommendation went to Treasury



1 Board April 22nd, 1964.

2 Q. Do you have the information for the
3 previous requests?

4 A. No. I have not it with me here.

5 Q. Maybe if you look in the files --
6 would you bring that?

7 A. We can provide that.

8 Q. You also had increases in connection
9 with District No. 3 pilots, I understand. There are
10 three Canadian pilots, I am informed, in that area.
11 How do you proceed in their case?

12 A. Well, we have only made one recom-
13 mendation for District 3. I understand that to be
14 Sarnia to the Lakehead.

15 Q. That is it.

16 A. And that was this year's recommenda-
17 tion of \$1425 a month.

18 Q. I see, and when was their first rate
19 established?

20 A. This year.

21 Q. No, no, the previous rate; when was
22 it established?

23 A. This is the first recommendation we
24 have made for that area.

25 Q. Oh, I see. You never received any
26 requests from the DOT concerning these pilots?

27 A. No, this is the first.

28 Q. I see, and that was the first time
29 you came across ---

30 A. That is the first time we dealt with



1 the Great Lakes area, that District No. 3, Sarnia to
2 Sault Ste. Marie.

3 Q. Nonetheless you were aware that when
4 the request came from the Department of Transport you
5 had three Canadian pilots who had been employed in
6 that area previously?

7 A. No, we were not aware of that.

8 Q. You were not aware of that? Were
9 you aware of what their salaries were when the request
10 came from DOT?

11 A. Well, my understanding is that this
12 is the first request that we have received with respect
13 to District No. 3.

14 Q. On what basis would you proceed to
15 recommend \$1425 in their case? I am instructed
16 they were getting \$1340 before. I think we have that
17 in evidence too?

18 A. Well, my notes may be wrong.

19 Q. Yes, well, if you have notes that is
20 fine; refer to your notes.

21 A. Would you mind repeating your ques-
22 tion?

23 Q. Do you know what rate or salary
24 these people received before 1964?

25 A. In the Great Lakes?

26 Q. District No. 3.

27 A. In the Great Lakes?

28 Q. Yes.

29 A. I mean Sarnia to Sault Ste. Marie?

30 Q. Yes.



1 A. I have not that information with me,
2 Mr. Lalonde.

3 Q. How did you proceed to establish
4 the rate of \$1425 in their case?

5 A. Well, we based it upon the Cornwall-
6 Kingston District. It was the same recommendation
7 as for the Sarnia-Port Weller.

8 Q. There again I understand that you
9 have no specific information as to what were the number
10 of hours worked in that particular district?

11 A. That is right.

12 Q. And you did not have any information
13 as to what were the earnings of the American pilots
14 employed in the same district and plying the same
15 waters?

16 A. That is right.

17 MR. LALONDE: Subject, my lord, to
18 whatever documents the witness may bring forward, I
19 have no further questions.

20 THE CHAIRMAN: Yes, Mr. Brisset?

21
22 CROSS-EXAMINATION BY MR. BRISSET:

23 Q. Sir, when you gave us those figures
24 of \$1425, \$1380 and so forth, this is a monthly rate
25 for the months worked? In other words, if the pilots
26 worked only a month they would have eight times \$1425
27 as their yearly remuneration; is that correct?

28 A. Well, the approval is per month,
29 the Treasury Board approval is per month and I presume
30 it is per month worked.



1 Q. And in the case of half a month then
2 the rate would be half?

3 A. We would have no knowledge of that;
4 we just make a recommendation to the Board.

5
6 DIRECT EXAMINATION BY MR. JACQUES:

7 Q. With respect to District No. 3
8 pilots you have no recommendations in your file?

9 A. Previous to this year?

10 Q. Apart from this year?

11 A. No, I have nothing here. I would
12 have to check my file on that.

13 Q. Would you check your file on that,
14 please?

15 A. Yes, I will.

16 Q. Would you at the same time bring for
17 us for filing with the Commission copies of the
18 Treasury Board Minutes? Would you have that in
19 your file? Would you have copies of the Treasury
20 Board Minutes?

21 A. I have a copy of the Treasury Board
22 Minute this year.

23 Q. Would you file copies of Treasury
24 Board Minutes for District No. 2 pilots, starting
25 with the original one and each year as another one
26 was passed?

27 A. Well, no doubt we can obtain that
28 from Treasury Board.

29 Q. Yes, would you?

30 A. Any Treasury Board approval that we



1 have is usually placed on the file, but we do not
2 have Treasury Board approvals for all our recommen-
3 dations.

4 MR. JACQUES: Then would you file
5 that, please?

6 THE CHAIRMAN: It would be better
7 that we obtain them ourselves.

8 MR. JACQUES: We could do that if
9 your lordship wishes.

10 THE CHAIRMAN: We will ask for a
11 complete series of that and give it a number right
12 away.

13 MR. JACQUES: Yes, it will be
14 Exhibit 1362.

15 ---EXHIBIT NO. 1362: (To be produced)
16 Treasury Board Minutes with
17 respect to remuneration paid
18 to District No. 2 and
19 District No. 3 pilots since
20 the beginning of the districts.

21 THE CHAIRMAN: Our Secretary is
22 going to request that from the Treasury Board.

23 THE WITNESS: Yes; it is obtainable
24 from Treasury Board or the Authority.

25 MR. JACQUES:

26 Q. Would you know of any instances where
27 your recommendation was not followed by Treasury
28 Board?

29 A. No, we have no record of any of our
30 recommendations having been rejected by Treasury Board.

Q. Would you be advised if your



1 recommendation was rejected?

2 A. Very likely.

3 Q. But you do not know?

4 A. Well, going back over the history of
5 our work I can only think of one instance where we
6 learned later that Treasury Board had rejected a
7 wage rate recommendation and had not advised us.
8 Now that has nothing to do with ships' pilots. It
9 was, I think, cleaning service women somewhere.
10 Usually if they think our recommendations are not
11 suitable they communicate with us immediately and
12 ask us to tell them why we recommended such-and-such
13 a rate.

14 Q. While we are talking about recom-
15 mendations have you done some work with respect to
16 setting up a rate for the pilots in the Halifax
17 District? There was an offer made to Halifax pilots
18 some years ago to come under prevailing rate em-
19 ployees' regulations.

20 A. We made a recommendation on request
21 of Transport in 1960 -- December, 1960 -- for ships'
22 pilots in the Halifax District.

23 Q. Would you have the breakdown of the
24 work that you have done to arrive at a particular rate
25 in that district?

26 A. Not me, but we would have it on our
27 files.

28 Q. Would you bring it with you, please?

29 A. Yes.

30 Q. Have you been requested also to



1 suggest a rate for the St. John's, Newfoundland pilots?

2 A. In the same year, yes -- 1960.

3 Q. Would you bring that file also?

4 A. Yes. At St. John's, Newfoundland?

5 Q. Yes, and Halifax?

6 A. And Halifax, yes.

7 Q. Would you have been requested by
8 the Department of Transport to prepare recommendations
9 with respect to any other district?

10 A. Yes, we recommended a rate for Sydney.

11 Q. Yes, when was that?

12 A. In 1960 and we recommended a rate
13 for Saint John, New Brunswick, in 1960.

14 Q. I see. Would you bring those files
15 also, please?

16 A. And we have recommended several
17 times rates for Goose Bay.

18 MR. JACQUES: Thank you, sir, and
19 you will bring those files this afternoon?

20 THE CHAIRMAN: Mr. Brisset?

21 MR. BRISSET: Have you made any
22 recommendations in respect to the St. Lawrence River
23 District, Quebec, Montreal, Montreal Harbour, Montreal-
24 Cornwall from 1960 to this day?

25 THE WITNESS: I do not believe so
26 and my notes confirm that.

27 CROSS-EXAMINATION BY MR. LALONDE:

28 Q. When you receive a request for an
29 increase in rate do you send one of your men in the
30 field to see what the work is exactly -- what it



1 implies, what type of work it is -- or do you rely
2 upon the information provided to you by the Department
3 concerned? I am referring to this particular case
4 of pilots.

5 A. No, we have not had occasion to send
6 out an investigator at any time.

7 Q. Is this a practice which is followed
8 in other instances, however, by your branch?

9 A. No. Sometimes we find it neces-
10 sary to send an officer out to view the work being
11 done by the employees in question or the class of
12 employees in question.

13 Q. The letter you referred to in
14 February, 1964 -- by whom was it sent?

15 A. The letter of request?

16 Q. Yes.

17 A. Sent to Mr. G. G. Cushing, Assistant
18 Deputy Minister, and the signature over the typed name
19 of J. R. Baldwin, Deputy Minister -- I believe that is
20 Duchat who signed it for Mr. Baldwin.

21 Q. That is the only letter you would
22 have in connection with this request for an increase
23 apart from the statistics forwarded to you by the
24 department?

25 A. Yes.

26 Q. Were these statistics attached to
27 the letter of Mr. Baldwin?

28 A. I think we received them later. I
29 do not think they were quite ready at the time the
30 letter was sent. Yes, they were sent later, March 4th.



1 Q. On March 4th, 1964, you have a letter
2 from Mr. Duchat, Chief Personnel Officer, Marine, to
3 yourself, and it reads as follows:

4 "As discussed in our recent
5 telephone conversation attached are
6 copies of comparative statements of
7 pilots' earnings and workloads for
8 the pilotage districts in Canada.
9 I trust this will be of assistance
10 in your study. Meanwhile, please
11 feel free to request further infor-
12 mation as required."

13 If I may, my lord, I will read into the record the
14 previous letter under the name of Mr. Baldwin to
15 Mr. Cushing.

16 "Dear Mr. Cushing" --

17 This is the letter dated February 17th, 1964.
18
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"Dear Sir:

By letter dated February 17th
1964, Treasury Board Minute 59-72-00 of
June 26th 1962 authorized remuneration
of \$1380 per month at prevailing rate
classifications for ships' pilots in
District No. 2, Port Weller-Sarnia area,
and \$1340 per month for District No. 3,
Lakehead area, under P.C. 58-55-04.

Would you kindly review the rates presently
applicable to these areas, and if further
information is required please feel free
to call Mr. W. Deichak, Telephone 2-0184.

Yours truly,

J.R. Baldwin."

This is what the correspondence said with regard to the
increase in 1954?

A. Yes.

MR. JACQUES: Thank you.

THE CHAIRMAN: In order to initiate a
new study does the request come only from DoT, or could
it originate somewhere else, such as from the pilots,
for instance?

THE WITNESS: No; it comes from the
Department of Transport.

THE CHAIRMAN: And you would not be
concerned if it came to you from the pilots -- the
employees -- or their association?

THE WITNESS: I don't recall that we



1 have ever received a request from the employed pilots,
2 but under the regulations we have been operating on the
3 basis that the request is received from the employing
4 department; and that has been the basis of establishing
5 prevailing rates for many years.

6 THE CHAIRMAN: Mr. Lalonde?

7 MR. LALONDE: I am informed that under
8 the regulations -- the Prevailing Rate Employees
9 General Regulations -- the employees have to deal
10 through their own employer, the Department concerned?

11 THE WITNESS: Yes.

12 MR. LALONDE: I am just asking this
13 question because I don't know what would happen if
14 the employer, the Department employer -- did not put
15 forward the request. If it has to go through the
16 Department the Department could just not put through the
17 request.

18 Secondly, you base your recommendation
19 on information on all the facts that exist, and you
20 said that you could make some inquiry yourself but
21 that so far you have relied only on the facts provided
22 you by the Department of Transport; is that correct?

23 THE WITNESS: Yes; the information
24 provided and discussion with them as to the duties of
25 the pilots that they propose to employ; and conversations
26 also with them about the duties of the self-employed
27 pilots.

28 MR. LALONDE: But have you discussed
29 this with the pilots?

30 THE WITNESS: We have had representations



1 from the pilots, yes, about duties and responsibility.

2 MR. LALONDE: Through their associations,
3 or through their cooperatives?

4 THE WITNESS: I don't know the names of
5 the associations, but we have had representations from
6 persons who came as...

7 MR. LALONDE: Those statistics that
8 are furnished to you by the Department of Transport --
9 are they made available to the pilots so that they
10 can be sure as to the accuracy of the records?

11 THE WITNESS: No; I have no knowledge
12 of that.

13 MR. LALONDE: If it is done it is done
14 by the Department of Transport?

15 THE WITNESS: By the Department.

16 COMMISSIONER SMITH: I understand
17 that the rate established is final and not subject
18 to any appeal; is that correct?

19 THE WITNESS: The rate is established
20 by Treasury Board and I don't know what procedures they
21 have for appeal.

22 If Treasury Board or the Department
23 of Transport were dissatisfied with the rate it is
24 likely we would receive a request from the Department
25 of Transport that we should take another look at it.

26 Treasury Board has never made such a
27 request to us, unless they think the rate is too high,
28 and then they ask us to tell them how we established
29 it.

30 THE CHAIRMAN: And if the pilots weren't



1 satisfied what would you do then?

2 THE WITNESS: We would consider any
3 representations made and any information they may wish
4 to submit.

5 COMMISSIONER SMITH: Would you make
6 any appeal to the Treasury Board on the basis of that
7 information?

8 THE WITNESS: No; we would only send
9 a recommendation to Treasury Board on the basis of
10 a request from the Department of Transport or on the
11 request of Treasury Board itself.

12 MR. JACQUES: Q. Before setting up
13 the rates, or before revising the rates, you don't
14 advise the pilots that you are going to revise the
15 rates, do you?

16 A. No. We don't revise the rates;
17 we merely make a recommendation.

18 Q. You review your recommendation to
19 the Board. When you review your recommendation to
20 the Board you don't notify the pilots that you have
21 been requested to do so?

22 A. No.

23 Q. Yet you accept representations by
24 pilots with regard to their work load and earnings,
25 do you?

26 A. We consider their representations,
27 yes. They may have information which is useful to
28 us in making up our mind as to what to recommend.

29 Q. They may have information which
30 is useful to you and yet they are not called upon by



1 you to give their opinion or to make available this
2 useful information when you review your recommendations?

3 A. No, we don't ask for representations.

4 Q. Would you search your files and
5 let us know this afternoon about these recommendations
6 which you have received from pilots -- where, when,
7 by whom, to what effect, and how you have considered
8 them?

9 A. Well, we would be glad to do that.
10 I doubt if we could do it for this afternoon.

11 Q. Well, if you could do it...

12 A. I shall make a search of my file.

13 THE CHAIRMAN: We could have this
14 tomorrow morning, I suppose?

15 THE WITNESS: We will try, My Lord.

16 THE CHAIRMAN: Thank you.

17 Are there any further questions at this
18 stage to Mr. Johnstone?

19
20 --- No response

21 THE CHAIRMAN: Thank you, Mr. Johnstone.

22 Now, this afternoon we have the Department
23 of Transport. Mr. McGillivray couldn't come. I
24 was wondering whether it would be possible to have
25 Mr. Johnstone come tomorrow?

26 Tomorrow we have the National Harbours
27 Board. I don't suppose this is going to be very
28 long, Mr. Lalonde?

29 MR. LALONDE: I quite agree.
30



1 THE CHAIRMAN: So we could ask Mr.
2 Johnstone to come tomorrow morning at 11 o'clock,
3 let us say.

4 MR. JACQUES: Before we start with the
5 Board?

6 THE CHAIRMAN: Yes; it won't be very long.

7 MR. JACQUES: Yes.

8 THE CHAIRMAN: Then, you will be here
9 tomorrow morning, Mr. Johnstone?

10 MR. JOHNSTONE: Yes, My Lord.

11 THE CHAIRMAN: We will now adjourn and
12 sit again at 2.30.

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16 --- Luncheon adjournment
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1 ---Upon resuming at 2.40 p.m.

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3 MR. JACQUES: Before continuing
4 with the evidence on the inquiries I should like to
5 put to Mr. McGillivray the question which Captain
6 Slocombe referred to him -- Question No. 9 of the
7 additional questions, and I quote:

8 "Find relevant orders-in-council
9 or indicate section of the law making
10 the payment of pilotage dues compul-
11 sory for the districts of Quebec and
12 Montreal."

13 MR. MACGILLIVRAY: Well, my lord,
14 we just have not been able to find any such order-in-
15 council relating to the districts of Quebec and
16 Montreal. I myself am doubtful that any such order
17 has ever existed. Under The Canada Shipping Act in
18 the Revised Statutes of 1927 the section of the Act
19 relating to compulsory pilotage specifically named
20 the districts of Quebec and Montreal and if my
21 memory serves me correctly it named also Halifax and
22 Saint John; I am not sure. They remained, and there-
23 fore the payment of pilotage dues was compulsory.
24 Therefore it would have been unusual to have an order-
25 in-council making it compulsory.

26 THE CHAIRMAN: Of course -- the law
27 was there so there was no need for it.

28 MR. MACGILLIVRAY: It is possible
29 that at some time prior -- I have not studied the
30 history of that section, but it may be that at one



1 time in the early legislation relating to Quebec
2 and Montreal an order-in-council was required and
3 such an order-in-council was passed. But I would
4 have thought that the effect of it would be that it
5 would be effectively revoked or rendered effete by
6 the passage of the section as amended in the 1927
7 section.

8 This matter was discussed in the
9 Senate committee dealing with Bill S-3 in 1958, 1959.
10 It was gone into in some detail before the Senate com-
11 mittee. Mr. Langlois at that time certainly put
12 forward the argument that such an order-in-council had
13 no doubt been passed and had remained in force and
14 the proposed amendment dealing with it was not pro-
15 ceeded with. Whether it was as a result of that
16 argument, I do not know. In any event that proposed
17 amendment to the Act which would have made it pos-
18 sible for the Governor in Council to make the payment
19 compulsory in those districts was not proceeded with.

20 We expressed our own views before
21 the committee -- not myself but one of the departmental
22 lawyers -- our view that an amendment was necessary
23 in order to make the payment compulsory.

24 MR. JACQUES: And Mr. Langlois'
25 argument was based, if I recall correctly, on Section
26 20 of the Interpretations Act?

27 MR. MACILLIVRAY: Yes.

28 MR. JACQUES: Which I might quote
29 for the purpose of discussion:

30 "Whenever any Act or enactment



1 is repealed and other provisions
2 are substituted by way of amend-
3 ment, revision or consolidation,
4 all regulations, orders, ordinances,
5 rules and bylaws made under the re-
6 pealed Act or enactment shall con-
7 tinue good and valid, in so far as
8 they are not inconsistent with the
9 substituted Act or enactment, until
10 they are annulled and others made in
11 their stead."

12 So in order for the Section to support compulsory
13 payment in Quebec then there should have been a
14 substituted article which could support the order-in-
15 council,

16 MR. MACGILLIVRAY: Yes.

17 MR. JACQUES: In view of the fact
18 that the Act or the revision of the Act is silent on
19 that subject, if there were an order-in-council it
20 no longer has support in the law?

21 MR. LALONDE: Well, this is subject
22 to argument.

23 MR. MACGILLIVRAY: Well, I would not
24 argue that. We have certainly felt that we were justi-
25 fied in continuing to treat the Quebec and Montreal
26 districts as districts in which the payment is com-
27 pulsory until such times as someone should attack our
28 position, which has not happened. If someone should
29 attack our position then we would be under the obligation
30 of trying to find such an order-in-council and trying



1 to justify the interpretation that has been put on it
2 obviously when this question arose. Certainly for
3 well over twenty years under The Canada Shipping Act,
4 1934, and the Revised Statutes of 1952, it has been
5 treated as a compulsory payment district.

6 MR. JACQUES: We say then the pay-
7 ment of dues is compulsory now more or less out of
8 tradition rather than under a legal basis which could
9 be ascertained?

10 MR. MACGILLIVRAY: No, I do not
11 think I would want to go that far. We would not like
12 to admit that we are doing anything illegal and we are
13 of the opinion there must have been some justification
14 down through the years for this position the depart-
15 ment and the Pilotage Authority have taken and until
16 we are put to the necessity of defending that position
17 we are not looking for a defence. I must say we do
18 feel that the matter should be clarified when the Act
19 is next opened.

20 MR. JACQUES: Or by this Commission?

21 MR. MACGILLIVRAY. Oh, well, I
22 believe that probably as a result of the report of
23 this Commission the Act will need some amendment.
24 Whether the Commission were to refer to it or not in
25 its report, I think this is one that the department
26 would want to see clarified.

27 THE CHAIRMAN: When we look into
28 the pilotage history in other districts very far back
29 we can see that at the time they all had a P.C. order
30 or provision of law whereby it was made compulsory



1 and it was necessary that it be so. Therefore I do
2 not see why Quebec and Montreal would not have re-
3 ceived the same treatment.

4 MR. JACQUES: We have orders-in-
5 council with respect to every other district.

6 MR. MACGILLIVRAY: Yes.

7 MR. JACQUES: The original one
8 stating that payment is to be compulsory.

9 MR. MACGILLIVRAY: Yes.

10 MR. JACQUES: And to the best of
11 your knowledge there are none for Quebec and Montreal?

12 MR. MACGILLIVRAY: As I say, we
13 have not done a thorough check for these and unfortu-
14 nately orders-in-council prior to about fifteen years
15 ago are not properly indexed in the Privy Council
16 office.

17 THE CHAIRMAN: That we found.

18 MR. MACGILLIVRAY: Yes. So it
19 would entail a lot of work searching for such an order-
20 in-council. We have quite a bit to do. We do not
21 take on this kind of job unless we have to.

22 MR. JACQUES: I wonder if the Com-
23 mission would want the department to pursue this study
24 of the problem and come up with a statement as to
25 whether they are of the opinion that legally payment
26 of pilotage dues is compulsory in Quebec and Montreal
27 and, if so, under what basis.

28 MR. MACGILLIVRAY: I wonder, my
29 lord, if that is particularly important. If the
30 Commission is of the opinion that the payment of



1 pilotage dues should be compulsory, then it will be
2 incumbent upon the department, if they intend to follow
3 your recommendation, to recommend a clarification of
4 this in the law. As a matter of fact, whichever way
5 the Commission might decide and as to whether we have
6 any opinion as to what the present state of the law
7 is, surely that does not matter much. It is the
8 fact.

9 THE CHAIRMAN: Yes. What you are
10 telling us is a fact. It is the situation that the
11 department is facing now. As far as we are con-
12 cerned we are going to make some search of our own
13 because, as we did in the other districts, we are
14 going to study the history of pilotage in that district
15 because it is quite relevant to do that and we might
16 find something. If we feel at the time it is neces-
17 sary to ask you to look for further information, we
18 will.

19 MR. JACQUES: I would not like the
20 Commission to be in a position of having to state in
21 its report that payment of dues has been compulsory
22 in the Quebec and Montreal districts for years after
23 stating the fact that nobody knew how it had become
24 compulsory and on what basis it was compulsory.

25 MR. MACGILLIVRAY: I would have
26 thought the Commission could make its report in some-
27 what the terms the department used to justify this
28 proposed amendment of a few years ago in saying there
29 is some doubt as to the validity of the position
30 taken.



1 THE CHAIRMAN: We thank you very
2 much for the suggestion.

3 MR. JACQUES: Now if we may return
4 to inquiries into disciplinary matters, I wonder if
5 you have anything else to add to what you said last
6 week with respect to the procedure which you suggested
7 should be followed?

8 MR. MACGILLIVRAY: Well, I am
9 trying now to remember where I left off last week on
10 this subject.

11 MR. JACQUES: We had reached the
12 point of discussing the so-called letter in disciplinary
13 matters.

14 MR. MACGILLIVRAY: Yes. I gather
15 we did undertake on Friday that we would produce a
16 copy of the type of so-called letter which is now
17 being used. I am afraid we do not have that with us
18 at present. One of the other counsel might.

19 I think our principal problem in
20 connection with pilot discipline has been that we have
21 been anxious to ensure that the pilot has a fair hear-
22 ing. We have recognized that upon occasion whoever
23 is conducting the hearing, whether it is the local
24 supervisor or the regional superintendent or someone
25 at headquarters and whether it is being done verbally
26 or by letter, sometimes the evidence against the
27 pilot will be a letter or an affidavit and there is not
28 an opportunity for cross-examination. This has led
29 us to endeavour to devise a procedure whereby we
30 could have a quick summary hearing in cases where



1 the ship is likely to be leaving. One of our duties
2 is to keep the ships moving and we have hoped that by
3 the appointment of the wreck commissioner we could
4 manage to have hearings quickly within a matter of
5 hours or days of the occurrence so as to have the
6 evidence of those who have alleged negligence or
7 failure to exercise due care on the part of the pilot
8 -- have that evidence adduced verbally in the presence
9 of the pilot and his counsel.

10 This is part of the reason for the
11 proposal to have a wreck commissioner -- someone who
12 is permanently ready to fly off at once to the place
13 where it would be most convenient to hold a hearing.

14 MR. JACQUES: But at the moment
15 there is no wreck commissioner in office?

16 MR. MACGILLIVRAY: No.

17 MR. JACQUES: With the result that
18 inquiries into disciplinary matters are done by the
19 local supervisor?

20 MR. MACGILLIVRAY: Yes. But as
21 a matter of fact the mere fact that no wreck com-
22 missioner has been appointed does not necessarily
23 make all that much difference. It is just that there
24 will be one person whose primary function will be to
25 hold inquiries. His appointment will still be
26 made under Section 558 of the Act. His direction to
27 hold a formal investigation will still be given under
28 Section 560 of the Act.

29 MR. JACQUES: I am sorry. We are
30 moving on to another pilot inquiry now. I would like



1 to finish off disciplinary matters, strictly dis-
2 ciplinary matters -- missing from the tour-de-rôle or
3 being absent without leave or being impolite to the
4 despatcher?

5 MR. LANGLOIS: May I ask, Mr.
6 McGillivray, do you make any distinction between the
7 inquiries held under 552 and the inquiries you can
8 hold under 329(f)?

9 MR. MACGILLIVRAY: Well, the
10 inquiry under Section 552 is one that I must say I
11 do not think we ever use.

12 THE CHAIRMAN: Any reason why?

13 MR. MACGILLIVRAY: Well, for one
14 thing this, I believe, is not intended to cover ships'
15 casualties. This is an inquiry into an accident on
16 a ship. Under 551 you find the shipping casualty,
17 which is an accident where the ship is involved in
18 a grounding or a collision.

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3 MR. MCGILLIVRAY: 552 is an accident
4 on a ship, and I think this means when a person falls
5 down a ladder, and so on. It is not intended to cover
6 this type of matter.

7 MR. JACQUES: It is certainly not
8 intended to be used instead of disciplinary inquiry
9 because there may be a disciplinary inquiry not
10 involving an accident, not taking place on a ship.

11 MR. MCGILLIVRAY: Yes.

12 MR. JACQUES: But with respect then
13 to disciplinary inquiries they must be held, perforce
14 under Section 239.

15 MR. MCGILLIVRAY: Yes.

16 MR. JACQUES: You have told us that
17 a report is made to the pilotage authority which in
18 turn lets the pilot know the nature of the charge
19 made against him and present his defence orally or
20 in writing.

21 Who has the job of bringing evidence
22 against the pilot? Who does that?

23 MR. MCGILLIVRAY: If the investigations
24 officer in his investigation turns up evidence
25 against the pilot, then that is brought to the
26 attention of the pilotage authority.

27 MR. JACQUES: In cases in which the
28 local supervisor has authority to impose a penalty,
29 I take it he does the inquiry first and then decides
30 if a breach of regulation has been committed, lets
the pilot know and then sits in judgment on the pilot,
although he has made the inquiry? He wears several
hats -- that of prosecutor, judge, juror and whatnot.



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MR. MCGILLIVRAY: Yes, and police.

I do not think this is too bad a thing in connection with minor offences. It is the sort of thing which I think is common throughout the services.

MR. JACQUES: I do not know about the others but in the navy the commanding officer never holds an inquiry and never prefers charges; the charges are inquired into and preferred by the master-at-arms.

MR. MCGILLIVRAY: Yes, this is true in the army but when you get down to the lower levels, the company commander level, the picture is a little mixed up.

MR. JACQUES: So in fact with respect to inquiries and disciplinary action taken by the local supervisor, there is no distinction at all?

MR. MCGILLIVRAY: I think that is a fair statement.

MR. JACQUES: With respect to the pilotage authority, again in disciplinary matters, the authority is the Minister of Transport?

MR. MCGILLIVRAY: Yes.

MR. JACQUES: And in the case of a major disciplinary breach how does the pilotage authority proceed?

MR. MCGILLIVRAY: At one time we were proceeding to obtain the information for him by means of an inquiry under Section 579 of the act.

MR. JACQUES: And Section 579 is the section in which it is provided that where the



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Minister has reason to believe that any master, mate or engineer is, from incompetency or misconduct, unfit to discharge his duties ---

MR. MCGILLIVRAY: Yes.

MR. JACQUES: That does not cover breach of discipline, does it?

MR. MCGILLIVRAY: Misconduct, I presume, is a breach of discipline.

MR. JACQUES: Misconduct, as a consequence rendering the pilot unfit to discharge his duties?

MR. MCGILLIVRAY: Yes. If a pilot puts a ship on the rocks through negligence ---

MR. JACQUES: Let us say that the pilot is constantly absent without leave.

MR. MCGILLIVRAY: We have never had an inquiry under Section 539 into such a circumstance. I do not think we have had very many instances, if any. I am not aware of any instances of a pilot being constantly absent without leave.

THE CHAIRMAN: And you do not need an inquiry for that, do you?

MR. MCGILLIVRAY: No.

THE CHAIRMAN: There is no way to lay charges before the authority?

MR. MCGILLIVRAY: No. Our procedure under Section 579 -- and I agree we may have been stretching the words when we have used that section -- has been for the type of hearing required when the case was serious enough to warrant serious disciplinary



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2 measures, such as a suspension for a substantial period
3 that is more than a matter of a few days, more than
4 a matter of a week or two. The procedure we have
5 adopted was to have a person appointed and to prepare
6 a statement of the case stating that it is alleged
7 that at a particular time at a particular place on
8 board a particular ship the pilot had failed to
9 exercise due diligence for the safe conduct of
10 the ship. This statement of the case has been sent
11 to the pilot together with a summons to appear. Then
12 the hearing has been held with the pilot present and
13 represented by counsel, and the hearing officer, as
14 required under the act, has been advised by counsel.
15 Counsel for the hearing officer calls all the witnesses
16 and all the evidence he possesses, and then counsel
17 for the pilot has adduced evidence and the pilot may
18 cross-examine the witnesses produced by the department.

19 MR. JACQUES: In short, would it not
20 be fair to say that you have never had a major disci-
21 plinary inquiry unless there has been a major casualty?

22 MR. MCGILLIVRAY: We had one under
23 Section 579 involving a charge of drunkenness. It was
24 a case of a pilot who in fact the Minister had reason
25 to believe was ---

26 MR. JACQUES: Who was unfit to discharge
27 his duties by reason of ---

28 MR. MCGILLIVRAY: By reason of
29 drinking. This case was heard and it was found
30 that there was not such evidence as would have been
supported in a court of law. It was a particular



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2 case of the pilot having been alleged to have gone
3 aboard a ship drunk and in my view -- and I was the
4 legal adviser to the commissioner holding the hearing --
5 there was not such evidence as would be acceptable
6 by a court to convict him of being under the influence
7 of drink, and the matter was dropped at that stage.

8 MR. JACQUES: You considered that this
9 fell within the word "misconduct"?

10 MR. MCGILLIVRAY: I must say that
11 we were endeavouring to find means in the act for
12 providing a hearing without going into the complications
13 of a formal investigation and in cases where formal
14 investigation is not possible because the case does
15 not fall within the provisions of Section 560. You
16 are restricted there to a case of casualty on board
17 British ships and Canadian ships. Mind you, under
18 paragraph (f) it probably does go as far as Section
19 579. At that time we were thinking of the formal
20 investigations under Section 558 in terms of those
21 that had been held in the past, and it usually takes
22 quite some time to get one set up and going. So we
23 endeavoured to find some other method under the act
24 and we settled on Section 579. We have been advised
25 subsequently by the Department of Justice that there
26 was doubt as to the applicability of this section to
27 pilots, and therefore we stopped using it.

28 At that stage we recognized that we would
29 have to find another means of giving a hearing to a
30 pilot. Consideration has been given to amendment of
the by-laws in each of these districts.



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2 THE CHAIRMAN: Under what authority?

3 MR. MCGILLIVRAY: Under the authority
4 of Section 329 (f) to provide hearings, but there
5 has been a natural tendency in the department since
6 it was decided to set up this royal commission not to
7 come up with any substantial amendments to the by-laws
8 or to the act. We have felt that since the situation
9 is now under review by a royal commission to come up
10 with something brand new would not be advisable. We
11 would prefer to be able to wait until the royal
commission reports.

12 THE CHAIRMAN: In other words, up to
13 now there was no machinery thought of providing for
14 the authority to investigate disciplinary matters --
15 only the Minister?

16 MR. MCGILLIVRAY: That is right.

17 THE CHAIRMAN: It has all the machinery
18 under 555 and so on, but not the authority.

19 MR. MCGILLIVRAY: That is correct. I
20 think our advice from the Department of Justice is
21 that the Minister, as pilotage authority, is not the
22 Minister of Transport, ^{he} is persona designata as
23 pilotage authority, and when he acts under Section 579
24 he is not acting as pilotage authority.

25 I think it would be desirable if the
26 wording of Section 327 were amended so that the
27 Minister is never operating with two different hats.
28 If Section 327 were to provide simply that where there
29 is not a local authority appointed, the functions of
30 pilotage authority shall be performed by the Minister



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2 of Transport, we could avoid that legal play.

3 THE CHAIRMAN: I think you would get
4 into another legal situation in that there would be
5 some additional responsibility imposed and some
6 additional duties imposed on a Minister of the Crown.
7 Maybe parliament would do that.

8 MR. BRISSET: May I ask a question?

9 Mr. McGillivray, in the case of an inquiry
10 under Section 579 and Section 568 into the conduct
11 of a pilot when such conduct has resulted in a
12 casualty, to what extent has the department admitted
13 the ship owner or any other party aggrieved -- ship
14 underwriters or cargo interests -- to participate in
15 such an inquiry and perhaps assist in pressing charges
16 against the pilot or assist in uncovering the facts?

17 MR. MCGILLIVRAY: To the best of my
18 recollection we have not done so to any extent. My
19 own feeling on it is that this^{is}/a matter between the
20 pilotage authority or the department and the pilot,
21 and that other counsel should not be heard at all
22 excepting counsel for witnesses. If the master of a
23 vessel is being called as a witness, he obviously is
24 entitled to counsel.

25 I am not sure that we have always stayed
26 strictly with that policy. There being no firm rules
27 of procedure laid down for inquiries under Section 579,
28 they were played by ear, as you might say, and it may
29 be that in some cases counsel for the ship owner
30 was heard.

I do not believe it has ever happened in any



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2 case in which I have been involved.

3 MR. BRISSET: In other words, it was
4 mainly an inquiry concerning the Minister himself in
5 his relation with the pilot involved?

6 MR. MCGILLIVRAY: Yes. It was not an
7 inquiry into the casualty as such but into the conduct
8 of the pilot.

9 MR. JACQUES: Coming back to inquiries,
10 for the purpose of discussion will you give us an
11 example of a charge laid against a pilot. You
12 mentioned one -- I forget the exact words but I think
13 you said "failure to exercise due diligences" or
14 something of that nature.

15 MR. MCGILLIVRAY: Perhaps I could
16 read the first portion of one of these so-called
17 "show cause" letters dated August 11, 1964, addressed
18 to a pilot.

19 "On June 12, 1964, the Motor Vessel _____"
20 --I had better not name the vessels --

21 "collided with S.S. _____ in the vicinity
22 of Buoy 16Q, St. Lawrence River, when both
23 ships were proceeding from Quebec to Three
24 Rivers with the Motor Vessel _____ under your
25 conduct.

26 We have examined statements taken following
27 this collision and are of the opinion that
28 you did not exercise the utmost care and
29 diligence."

30 -- this is signed by the superintendent --

"in the safe conduct of the vessel to which
you were assigned in violation of Section 13
of the Montreal pilotage district general



1
2 by-law.

3 You also failed to report this accident
4 until a period of five days had elapsed,
5 in violation of Section 12 (3) of the
6 district by-law."

7 The letter then goes on to criticize
8 certain of the pilot's actions immediately prior to
9 the collision to the effect that he did not indicate
10 his intentions to the other vessel, etc. He is then
11 told:

12 "We now inform you that the imposition of
13 a penalty pursuant to Section 16 (1) of the
14 by-laws is under consideration."

15 The pilot is then invited to give a defence.

16 MR. JACQUES: I see. With a charge
17 similar to this that you have just read under what
18 section of the law would you proceed to inquire? He
19 would be charged with what?

20 MR. MCGILLIVRAY: I think there are
21 two charges. One was that he failed to exercise the
22 utmost care and diligence.

23 MR. JACQUES: Under what section of
24 the law would you proceed with the inquiry in regard
25 to that?

26 MR. MCGILLIVRAY: There is no particular
27 section of the law.

28 MR. JACQUES: For the purposes of
29 discussion we could start with offences which might
30 be committed by a pilot and give rise to inquiry, and
I think the first one is Section 359 of the act.



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2 MR. MCGILLIVRAY: No, I would not say
3 that. In this case we proceed under the by-law. The
4 by-law requires that the pilot exercise the utmost
5 care and diligence in the safe conduct of the vessel --
6 Section 13 of the by-laws of the Montreal district.

7 If the officials of the pilotage authority
8 have reason to believe this has not been done, I think
9 it is quite in order for them to investigate the matter
10 in order to see if there is evidence^{that}/there has been an
11 infraction or there has not been an infraction.
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1 Q. Under what section of the law did
2 they carry out their investigation?

3 A. I don't think they need any authority
4 to carry out such an investigation unless in order to
5 carry it out they need special powers of summoning
6 witnesses, etc., so they carry it out with no more
7 legal backing than the fact that they are employed
8 by the Pilotage Authority.

9 THE CHAIRMAN: In this case it is a
10 matter of being dealt with by the Authority, not by the
11 Minister?

12 MR. MCGILLIVRAY: Yes, sir, that
13 is correct.

14 THE CHAIRMAN: The power for the
15 authority to do this is under this section of the law
16 and the bylaw which gives them power to impose fines.

17 MR. MCGILLIVRAY: Yes.

18 THE CHAIRMAN: And also to withdraw,
19 as Authority, not as Minister, the licence or to suspend
20 the licence?

21 MR. MCGILLIVRAY: Yes, my lord.

22 THE CHAIRMAN: So therefore having
23 the right to do that, they imply they have to have the
24 means to do it?

25 MR. MCGILLIVRAY: Yes.

26 THE CHAIRMAN: To carry out investi-
27 gations the way it should be done although they can take
28 any procedure under Section 329(f)?

29 A. That is the view I take, my lord.
30 The fact is that he has a duty under the Bill of



1 Rights to see that the pilot has an opportunity to
2 present his defence and to hear the evidence against
3 him and therefore it must be sworn evidence.

4 MR. JACQUES:

5 Q. The answer to that is "Evidence in
6 what manner"?

7 A. I don't think it matters to the
8 ultimate disposition of the case what the manner has
9 been, whether the evidence is given to the Pilotage
10 Authority by letter or possibly an affidavit supplied
11 by the owner of the ship or by a report from an employee
12 of the Pilotage Authority who has gone out and ques-
13 tioned people and perhaps collected the document. It
14 would probably be a combination of both.

15 Q. So now the Authority is in posses-
16 sion of information which leads it to believe that
17 this particular pilot did not exercise the utmost
18 care and diligence in the safe conduct of the vessel
19 blank?

20 A. Yes.

21 Q. What happens?

22 A. This so-called show cause letter is
23 written whereupon the pilot or his solicitor prepares
24 a reply; and he is invited by this letter to present
25 in writing to the Pilotage Authority any statement on
26 his own behalf he may wish, or alternatively to appear
27 before the Supervisor of Pilots and present his
28 defence.

29 Q. Is he offered in the letter the
30 opportunity of perusing and studying the evidence



1 gathered against him?

2 A. I am afraid in this particular letter
3 he is not.

4 Q. I am afraid in the other letter he
5 was not either.

6 A. That may be so. There is an indica-
7 tion in this letter of details of his alleged miscon-
8 duct but ---

9 Q. Now ---

10 A. Excuse me for a moment. No, I am
11 sorry, the final paragraph of the letter reads:

12 "For your information we enclose copies
13 of the transcript of evidence
14 taken in this case".

15 Q. That is a rather recent development,
16 is it not?

17 A. No, I don't think it is too recent.
18 It has been recognized for some time that a pilot does
19 not -- no one can possibly make a defence unless he
20 knew what the evidence was against him.

21 Q. I suggest to you that it has been
22 recognized only within the last couple of years.

23 A. Well, I guess the whole -- it is
24 only within about, I suppose, the last year we have
25 not been holding inquiries under Section 579 in lieu
26 of this procedure in cases where there is sufficient
27 evidence that you can present a transcript to the
28 pilot.

29 Q. I suggest to you that at least up
30 to a few years ago a transcript of any evidence taken,



1 let us say, aboard the other ship, in cases of collision,
2 was never, unless one fought for it, made available to
3 counsel for the opposite side.

4 A. That may be. Of course, it would
5 have been unusual until very recently for there to be
6 any transcript except in cases of preliminary inquiries.
7 There has been a tradition of maintaining a certain
8 secrecy as to the proceedings of this preliminary
9 inquiry.

10 Q. I suggest to you in those days what
11 actually happened in law and in fact was that the
12 department would hold an inquiry under The Canada
13 Shipping Act, under those sections towards the end of
14 the Act, and once having gathered this evidence turned
15 around and changed hands and sat as Pilotage Authority
16 in judgment against the pilot and at the same time
17 would not let the pilot have the evidence gathered
18 on the other ship, in cases of collision.

19 A. You sound as though you are speaking
20 from experience.

21 Q. I speak from experience.

22 A. I must say I cannot confirm this.
23 It must be so. If it is so, I think you have taken
24 a step forward in changing the system.

25 THE CHAIRMAN: I suppose you are
26 talking about the Minister doing that because he is
27 the Pilotage Authority, or the Deputy Minister.
28 Nobody else is the Pilotage Authority.

29 MR. JACQUES: My lord, in those
30 days and even today, as we can see from this letter,



1 you don't know who is talking to you.

2 THE CHAIRMAN: Do you mean to say
3 that an accused person would never appear before his
4 judge?

5 MR. JACQUES: It is difficult to go
6 before the judge because the letter that was just read
7 was signed by D. R. Jones, I believe, the Superintendent
8 of Pilots. Is that correct?

9 MR. MCGILLIVRAY: The Superinten-
10 cent of Pilotage.

11 MR. JACQUES:

12 Q. If you look at the law and the
13 bylaws Captain Jones as Superintendent of Pilotage
14 has no authority whatsoever.

15 THE CHAIRMAN: No.

16 MR. JACQUES: So the judge in
17 theory is the Minister. There is no delegation of
18 authority at all except to the local supervisor.

19 MR. MCGILLIVRAY: Yes, but of
20 course, the final adjudication of this case would be
21 made by the Minister.

22 MR. LALONDE: Or the Pilotage
23 Authority, which one?

24 MR. MCGILLIVRAY: I am sorry, by
25 the Pilotage Authority himself, with the full report
26 before him, and Captain Jones in sending this letter is,
27 I think, performing nothing more than a clerical
28 function.

29 MR. JACQUES: With the result, my
30 lord, that what happens in fact is that we were not



1 talking to our judge. We were talking to someone
2 who made a report to our judge.

3 THE CHAIRMAN: On the other hand I
4 can see that the proceeding was as a written pro-
5 ceeding. There is nothing verbal in the physical
6 appearance. There is an appearance in writing.

7 MR. MCGILLIVRAY: Not always. I
8 would like to make it clear that the department is not
9 happy with the situation. We realize it has this
10 drawback. We hope there is going to be a solid
11 recommendation out of the Royal Commission. When we
12 are asked to make our final submission to the Commis-
13 sion we certainly will advert to this point. We
14 have endeavoured over the years to give a pilot as
15 good a hearing as we can under the circumstances;
16 bearing in mind oftentimes the delays in the matter
17 coming to the attention of the Pilotage Authority and
18 the desire not to hold up ships and we are certainly
19 anxious to find a solution.

20 THE CHAIRMAN: I see there are two
21 factors. One is the time element as far as the
22 witnesses, and so on, are concerned. The second one
23 is the fact that the Authority is quite remote.

24 MR. MCGILLIVRAY: Yes.

25 THE CHAIRMAN: So that complicates
26 your situation very considerably.

27 MR. MCGILLIVRAY: And I think a
28 further thing, my lord, is the fact that when pilotage
29 was first set up under the law, pilotage authorities
30 were local bodies who devoted a lot of their time to



1 pilotage. Where the Pilotage Authority is the
2 Minister of Transport, the Pilotage Authority for
3 ten pilotage districts as well as all the other func-
4 tions that he has to perform, it is quite clear that
5 except in the most important cases it would be unlikely
6 that the Minister could give his full personal atten-
7 tion to anything other than reports from his officers.

8 THE CHAIRMAN: In other words, the
9 situation that exists now was never contemplated by
10 the law?

11 MR. MCGILLIVRAY: I think that is
12 correct, sir.

13 MR. JACQUES:

14 Q. If the Pilotage Authority was so
15 busy as you imply, why did it not delegate some of its
16 powers as it was empowered to do by Section 327?

17 A. Well, I wonder whether it is very
18 important to know why. It was not done. The fact
19 is that it was not done and if it is desirable that
20 it should be done and -- some authority was dele-
21 gated under the bylaws, but if this Royal Commission
22 feels that there should be a greater delegation then
23 I am sure that the recommendation would be very
24 carefully looked at by the Minister.

25 THE CHAIRMAN: We would like to
26 know whether there are any strong reasons why it
27 should not be.

28 MR. JACQUES: Yes.

29 MR. MCGILLIVRAY: I think I can
30 say that this has been the reason. I am not sure. I



1 can see for one thing that local supervisors or
2 regional superintendents, in order to give a pilot a
3 hearing, would face themselves with the prospect of
4 sitting in judgment in, say, an office in Montreal
5 then someone besides the superintendent would have to
6 be present to bring forward the evidence or the
7 superintendent may do it himself. But he might be
8 faced with one or two counsel who would be raising
9 objections on matters of procedure and on evidence
10 in which he would feel not competent to act and I
11 know very well that a local superintendent in time
12 would be faced with a pilot represented by counsel
13 and would want counsel for himself or someone to
14 act in the position of a judge advocate.

15 THE CHAIRMAN: Or he is going to
16 remand to the Authority.

17 MR. MCGILLIVRAY: Yes. If the
18 proceedings were going to be formal, that is, if the
19 pilot is going to be given his right of counsel and
20 is going to take advantage of it then it is pretty
21 difficult for any person, unless he has with him some-
22 one in the nature of a judge advocate, to advise him
23 on objections that may be raised.

24 THE CHAIRMAN: So there would appear
25 to be two types of proceeding, a summary proceeding and
26 a formal one.

27 MR. MCGILLIVRAY: Yes.

28 THE CHAIRMAN: Otherwise little
29 offences and so on, current affairs, could not be
30 dealt with efficiently?



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1 MR. MCGILLIVRAY: That is right.

2 MR. JACQUES:

3 Q. So the present set-up was continued
4 and evolved in the right direction through the efforts
5 of counsel for pilots?

6 A. No, I am not admitting that entirely,
7 Mr. Jacques. I think the fact is that the Pilotage
8 Authority was made well aware by its own advisers
9 of the need to comply with the Bill of Rights and
10 with the concept of the Bill of Rights before the
11 Bill of Rights was ever made law.

12 MR. LANGLOIS: Is that after cer-
13 tain writs were taken by counsel for pilots?

14 MR. MCGILLIVRAY: I don't know.
15 I am not too sure. I must say I think that the first
16 time I am aware of this type of advice having been
17 given is shortly after I became acquainted with
18 pilotage and the fact there was a pilot discipline
19 problem.

20 MR. JACQUES: Why then did it take
21 so many years to establish the practice of supplying
22 the pilot with a transcript of the evidence taken
23 in his case?

24 A. Well, again, I don't think I can say
25 why. I recognize that it did take several years.

26 Q. Several years indeed.

27 THE CHAIRMAN: We will adjourn for
28 a few minutes now.

29 ---Short recess.
30



1 ---Upon resuming.

2
3 MR. JACQUES:

4 Q. Referring to bylaw 13 of the Montreal
5 bylaws which indicates that a pilot shall proceed
6 with utmost care and diligence in the safe conduct
7 of the vessel; for the purpose of clarifying the
8 record would you tell us under what section of the
9 law is the Pilotage Authority empowered to adopt a
10 bylaw such as bylaw 13 of the Montreal bylaws?

11 A. Well, I have never previously studied
12 this question. That section is in the bylaws of
13 all districts and goes back into the mists of
14 antiquity, but I presume that it would come under
15 Section 329(f), make regulations for the government
16 of pilots and of masters and mates holding certificates
17 enabling them to act as pilots on their own ships,
18 and for ensuring their good conduct on board ship
19 and ashore, and attendance to and the
20 performance of their duty on board and on shore.

21 I should think there is adequate
22 authority in that section, that paragraph of section
23 329 of the Act for such a bylaw.

24 Q. I see. Now, with reference to the
25 letter which you have read to the Commission would
26 you mind reading the last paragraph again stating that
27 unless a pilot makes his defence you propose to award
28 punishment, or something to that effect?

29 A. I think perhaps I could read two
30 paragraphs of that letter. The first one -- not the



1 first paragraph of the letter, but one paragraph:

2 "We now inform you that the imposition
3 of a penalty pursuant to Section 16(1)
4 of the bylaws is under consideration.
5 Of course before any action is taken in
6 this regard you may, in accordance with
7 Section 16(2) of the bylaws, present
8 in writing to the Pilotage Authority
9 any statement in your own behalf.
10 Such statement, if made, is to reach
11 this office by August 24th, 1964."

12 The letter is dated August 11th.

13 Q. Are you not in fact reversing com-
14 pletely the burden of proof in telling a pilot that
15 he has been provisionally found guilty?

16 A. I admit -- I agree that it is not --
17 that it is not the best type of letter. I think it
18 would be preferable if an indication were given that
19 the Pilotage Authority has formed the opinion that
20 a prima facie case has been made and ask him to
21 put in his defence. This is certainly what was
22 intended.

23 Q. Even then are you not reversing
24 all the sacrosanct principles of our law by the fact
25 that a man is presumed to be innocent until he is
26 proved guilty and that he who charges him with an
27 offence has the burden of establishing beyond a
28 reasonable doubt the guilt of the accused?

29 A. Well, I think in this letter care
30 has been taken not to state that they consider the



1 charge has been proven.

2 In the earlier draft, which I admit
3 to my shame was prepared by myself and was probably
4 used in cases -- the statement in the letter that the
5 pilot -- in the so-called show cause letter is made
6 by the person who made the investigation, that is
7 the local supervisor. The statement is "I have
8 conducted a thorough investigation of the matter and
9 have arrived at the conclusion that this allegation
10 is true and that you have violated Section so-and-so
11 of the bylaws."

12 This was the type of letter to be
13 used after by the investigating -- in the case where
14 the investigating officer is adjudicating the matter.

15 I am not sure but what such letter
16 was also used when it was sent out from headquarters
17 at that time three or four years ago.

18 Certainly, a change has been made
19 so as to remove any suggestion that the matter had
20 been adjudged on the basis of evidence presented
21 under the hands of the Pilotage Authority.

22 Q. Even with the present show cause
23 letter is it not equivalent to depriving the pilot
24 of his right to cross-examine a witness?

25 A. Yes.

26 Q. It is?

27 A. Yes, but the fact being though that
28 we have been fairly confident that if a pilot felt
29 he was being seriously prejudiced by his inability
30 to cross-examine, he would say so and ask for a hearing



1 of the matter.

2 Q. Has it happened?

3 A. There has been at least one case --
4 I can't name it -- I believe there has been at least
5 one case where after endeavouring to clear it up by
6 an exchange of letters, we decided there should be
7 a hearing. Whether this was under pressure from
8 the pilot or simply because from the nature of the
9 defence he put in we felt it was not possible to make
10 a proper adjudication without a hearing of all the
11 evidence, I do not know. I believe that was so in
12 this case.

13 Q. In that particular case to which
14 you refer who would be the judge, as it were?

15 A. Well, I have no doubt that is a
16 defect in our procedures but it is pretty hard to say
17 that anybody other than the Pilotage Authority is
18 the judge even where there is a hearing under Section
19 579. That is simply a hearing to gather evidence
20 and it was always made clear that the person taking
21 that hearing was not making any adjudication. He
22 was simply going to report what evidence he had
23 received and make an assessment of that evidence and
24 the adjudication was made by the Pilotage Authority.

25 Q. But in fact I think we all know
26 that the Minister never adjudicates upon a case, that
27 this is done by his advisers.

28 A. I don't think there was ever a case
29 where a pilot's licence was suspended pursuant to one
30 of these hearings without the Minister having the full



1 matter placed personally before him.

2 Q. But concurring with the recommen-
3 dations of his staff?

4 A. There would be no doubt an assessment
5 of the case by one or more of the staff before it
6 reached him, but the whole thing was placed before
7 him.

8 Q. But neither party has been allowed
9 to present their evidence before the Minister?

10 A. That is correct.

11 Q. The Minister was more or less in the
12 position of an appeal court, not having seen the wit-
13 nesses, how they behaved in the box, their demeanor ---

14 THE CHAIRMAN: Or of a judge. A
15 judge renders judgment upon evidence that has been
16 gathered from other places and referred to him for
17 judgment. That is very often the case.

18 MR. MCGILLIVRAY : Oh, yes.

19 MR. JACQUES:

20 Q. He would be in that position?

21 A. Yes.

22 THE CHAIRMAN: You see that even in
23 the Quarterly Sessions of the Peace. The party
24 would have had his evidence taken in other places.
25 We admit that so we can render judgments right and
26 left.

27 MR. JACQUES: This is by consent of
28 the parties.
29
30



1 THE CHAIRMAN: Oh, yes, of course,
2 by consent.

3 MR. JACQUES:

4 By consent and not through a pro-
5 cedure which has been set up as a system?

6 MR. MACGILLIVRAY: I should make it clear, my lord,
7 that I am not endeavouring here to defend the depart-
8 ment or the Pilotage Authority in connection with this.
9 I think an honest effort was made to find a means of
10 giving the pilot a hearing. One of the things that
11 will be put before the Royal Commission by the depart-
12 ment in a final submission I have no doubt will be a
13 statement acknowledging that the department does not
14 consider that there is now a satisfactory system for
15 dealing with infractions and a statement of the
16 department's hope that this Royal Commission is going
17 to be able to suggest a solution.

18 THE CHAIRMAN: What you are explain-
19 ing to us is all the factors that makes the system
20 difficult to establish?

21 MR. MACGILLIVRAY: Yes, my lord.

22 THE CHAIRMAN: The difficulties
23 that we are encountering and so on?

24 MR. MACGILLIVRAY: Yes, my lord.

25 MR. JACQUES: I have no more
26 questions with respect to that particular problem,
27 my lord. I do not know whether the other counsels
28 have.

29 THE CHAIRMAN: Mr. Brisset?

30 MR. BRISSET: Mr. Macgillivray, in



1 the case of the so-called letter that you have read to
2 us, or extracts of which you have read to us, am I
3 right in understanding that the investigation carried
4 out by the investigating officer was not one under
5 Section 579?

6 MR. MACGILLIVRAY: That is correct.

7 MR. BRISSET: Rather under the bylaw?

8 MR. MACGILLIVRAY: Well, an investi-
9 gation actually made under the authority of no legis-
10 lation. It was simply an investigation on the part
11 of the Pilotage Authority by an employee of the
12 Department of Transport who can be taken to be an
13 agent of the Pilotage Authority.

14 MR. BRISSET: I am advised that
15 during the course of this season there were two serious
16 groundings in the District of Quebec, one involving
17 the SUNBRAYTON on May 22nd and one involving the
18 SUNVICTOR on June 10th. In the latter case the
19 accident was quite serious and it involved damages
20 to the extent of something like \$500,000 to the vessel.

21 I am also advised that there has
22 been correspondence between the Shipping Federation of
23 Canada and the Department in connection with these two
24 casualties, the Federation having requested the Depart-
25 ment to let it be known whether there was an investi-
26 gation being carried on. The answer was Yes. I am
27 wondering whether it is the same kind of investigation
28 that is being carried on as was carried on in the case
29 of the so-called letter which we have been discussing?

30 MR. MACGILLIVRAY: I believe that is



1 the case. I think I can say that in the case of
2 neither of those has there been a preliminary inquiry
3 and therefore the investigation carried on would be
4 such a one as I have been discussing.

5 MR. BRISSET: Is there any reason
6 why in carrying out such an investigation the shipowner
7 concerned with this particular loss would not be kept
8 advised of what is going on, or is there any reason why
9 the shipowner would not be called to assist to the best
10 of his ability in the investigation carried out by the
11 department or the investigating officer?

12 MR. MACGILLIVRAY: This is a sug-
13 gestion that I have never given much thought to. It
14 seems to me that where we are dealing with the matter
15 as a disciplinary problem the department, or the
16 Pilotage Authority and its employees have a function
17 similar to the functions of the police in examining
18 a crime, investigating a crime or an offence under a
19 statute. In an attempt to find the facts on such
20 an investigation they would no more invite the ship-
21 owner to participate than would the police invite me
22 to participate in an investigation if I were to give
23 them some information that would lead them to investi-
24 gate someone's conduct in connection with an alleged
25 infraction of the law.

26 MR. BRISSET: But would you not
27 believe that the shipowner would be perhaps the best
28 source of information that could be obtained? When
29 I say the shipowner I am speaking, of course, say ^{of} his
30 technical department and the master of the ship and



1 other people in his employment who would be able to
2 throw light on the facts.

3 MR. MACGILLIVRAY: Well, I think that
4 the investigating officer should interview anyone who
5 can throw light on the facts and that he would obviously
6 in the first instance realize that he must question
7 the officers and crew of the ship to the extent that
8 they have knowledge of the matter and if in the course
9 of that investigation or if some suggestion is made to
10 him that would lead him to believe that other people
11 in the employ of the shipowner or the employ of his
12 agents could give him relevant information, I am sure
13 he would, he should, go and ask those people for
14 statements.

15 But he is after facts and after all
16 there is only a limited number of people who can give
17 factual evidence about the grounding of a vessel.

18 MR. BRISSET: We are informed, or
19 at least it is the latest communication which in this
20 case the Shipping Federation has had from the depart-
21 ment, that up to date in these two groundings no
22 final decision has been taken by the Authority even
23 though in one case five months had elapsed and in the
24 other case four months had elapsed. Is there any
25 particular reason for the length of time involved in
26 the completion of what appears to be perhaps a summary
27 or at least what should be an expeditious investigation?

28 MR. MACGILLIVRAY: Well, again I
29 cannot say what the reason is for the delay. I
30 recognize that it is unfortunate that the matter could



1 not have been decided in less than the period you have
2 stated. If it is five months it seems to me that is
3 an undesirable length of time and I am sure the depart-
4 ment and the Pilotage Authority would agree with that
5 statement. This is one of the points that I have made
6 previously. We are looking for an expeditious way of
7 handling these matters and we hope that we will find
8 one.

9 MR. BRISSET: Thank you.

10 THE CHAIRMAN: Mr. Lalonde?

11 MR. LALONDE: Mr. Macgillivray, do
12 you have any information as to the procedure which is
13 followed in connection with the prevailing rate em-
14 ployees in District No. 2 so far as discipline is con-
15 cerned?

16 MR. MACGILLIVRAY: I would hesitate
17 to speak on that today because these people being em-
18 ployees of the department, when disciplinary action
19 is indicated they are disciplined in the same way as
20 any other prevailing rate employees, and it is quite
21 likely that as is the case with nearly all employees
22 of the department it would be unlikely that the people
23 administering that field have to come to the law
24 branch for advice.

25 MR. LALONDE: Do I understand you
26 rightly then that you say you never had anything to
27 do with disciplinary measures concerning prevailing
28 rate employee pilots?

29 MR. MACGILLIVRAY: No, I cannot say
30 that for sure. I have a recollection of being consulted



1 in connection with a pilot in, I think, the Port Weller-
2 Sarnia district who was disciplined for an infraction
3 of the Civil Service Regulations.

4 MR. LALONDE: Well, I would like you
5 to explain to us summarily what is the situation in
6 that regard. We are faced with a situation according
7 to which certain provisions are contained in The
8 Canada Shipping Act. You referred to the various
9 sections -- 555, 558 and 579 of The Canada Shipping
10 Act. You also have the prevailing rate employees
11 regulations, which as you state provide for the general
12 conduct of the employees. Now what is followed when?
13 Do you have any information in that respect? I must
14 say in some instances these provisions do not agree.

15 MR. MACGILLIVRAY: Well, of course,
16 as to the pilots who are prevailing rate employees they
17 are not pilots to whom Part VI of the Act applies as
18 far as disciplinary matters are concerned. They are
19 not licensed pilots; they are registered pilots.

20 MR. LALONDE: So they would not be
21 covered by Part VI at all?

22 MR. MACGILLIVRAY: I think that is too
23 sweeping a statement, but they are not covered by any
24 bylaws or regulations of the nature of those that are
25 made under Section 329. The regulations that may be
26 made under Part VI(a) of the Act are very, very limited
27 in their scope and I think Part VI(a), without reading
28 it at the moment, makes no provision for disciplinary
29 matters.

30 MR. LALONDE: Well, then, how do



1 you arrange this with the pilots in District No. 1
2 who are under Part VI(a) and who have a bylaw which
3 provides for penalties and all that?

4 MR. MACGILLIVRAY: Those pilots, of
5 course, are under Part VI and also under Part VI(a).
6 They are under Part VI in that they are licensed pilots
7 of the Kingston District and they are under Part VI(a)
8 because they are registered pilots under that Part.

9 MR. LALONDE: They wear two hats?

10 MR. MACGILLIVRAY: Being not pre-
11 vailing rates employees they, of course, are not subject
12 to any of the sort of disciplinary action that can be
13 taken under the Civil Service Act.

14 MR. LALONDE: I see, and then the
15 pilots in District 2 and District 3 would come under
16 the disciplinary provisions provided for by the pre-
17 vailing rates employees regulations or the Civil
18 Service Act?

19 MR. MACGILLIVRAY: Well, I am not
20 familiar enough with it, but whatever it is it is
21 under either the Civil Service Act or the prevailing
22 rates regulation -- I think probably under the Civil
23 Service Act.

24 MR. LALONDE: Would the provision
25 of Part VIII apply to Canadian pilots in District 2
26 and District 3?

27 MR. MACGILLIVRAY: Well, I think
28 you have to read the wording fairly carefully. For
29 instance, in Section 555, subsection (2), the
30 preliminary inquiry, a person conducting it being



1 permitted to cancel the licence or suspend the licence
2 of a pilot. The pilots who come under Part VI(a)
3 only do not have licences, so their licences could not
4 be suspended. But I presume -- I would imagine; I
5 do not know this -- under the Civil Service Act there
6 must be some provision for suspension from duty of a
7 person who is suspected of not doing his job properly.

8 MR. LALONDE: Right now we will
9 come to this: what about cases where you have casual-
10 ties? Would you apply then 558?

11 MR. MACGILLIVRAY: I am satisfied
12 that Section 558 is applicable. A formal investiga-
13 tion could be ordered but the power of the commissioner
14 holding a formal investigation would not extend, I
15 think, to the suspension of a pilot who is under
16 Part VI(a) of the Act only. I should think this
17 reflects a need to take another look at Part VI(a) to
18 see whether it fits the situation.

19 MR. LALONDE: Or another look at the
20 prevailing rate employee system, whether it is adapted
21 to the function.

22 MR. JACQUES: It would not make any
23 difference; they would still be registered pilots and
24 not licensed pilots.

25 MR. LALONDE: They could be both like
26 in District No. 1.

27 MR. MACGILLIVRAY: Yes, they could
28 be, but the fact is that under Section 568 it provides
29 for the certificate of a master, mate or engineer or
30 the licence of a pilot to be cancelled or suspended



1 and I think that construed strictly it does not apply
2 to the prevailing rates employees.

3 MR. LALONDE: And 579, would it
4 apply?

5 MR. MACGILLIVRAY: No, I think not.

6 MR. LALONDE: Section 579 would not
7 apply to these people?

8 MR. MACGILLIVRAY: No. Again that
9 would involve -- you would have to bring yourself
10 within the wording of subsection (2) of 568, which
11 talks about pilots' licences and if they are not
12 licensed pilots obviously it would not apply.

13 MR. LALONDE: Right now who deals
14 with infractions concerning District 2 and District 3
15 pilots?

16 -

17 -

18 -



1
2 MR. LALONDE: Does the law branch of
3 your department have anything to do with that?

4 MR. MCGILLIVRAY: First let me say
5 that we must recognize that since the Great Lakes
6 pilotage was set up only three years have elapsed
7 and I very much doubt, without knowing anything about
8 the statistics, that we have had more than perhaps
9 one case per year. When we try to talk about what
10 is customary we must remember that we are dealing with
11 a very small number of cases. However, the cases are
12 disposed of by the Deputy Minister, I believe. I
13 think he is competent to order suspensions under the
14 Civil Service Act or the prevailing Great Lakes
15 regulations.

16 The Deputy Minister would ask for any advice
17 he needed and if there were any doubt about the
18 propriety of the thing, if there were any doubt about
19 the type of evidence that was put in, I am sure he
20 would ask for legal advice.

21 MR. LALONDE: In effect, then, it
22 becomes a purely Civil Service matter?

23 MR. MCGILLIVRAY: Yes.

24 MR. LALONDE: Thank you.

25 MR. BRISSET: In view of what you
26 have said, Mr. McGillivray, would I be correct in
27 concluding that the liability of the registered pilot
28 under Part VIA is not limited to \$300 like that of a
29 licensed pilot under Section 362?

30 MR. MCGILLIVRAY: No, I do not agree
with that. I have considered the word "pilot" as used



1
2 in 362 is all by itself and comes within the definition
3 of "pilot" in Section 2(64). That definition, as I
4 recall, does not refer to licensed pilots, and there-
5 fore the limitation would apply.

6 MR. LALONDE: I am sorry, yes, it does.

7 MR. JACQUES: 362 refers to "pilot".

8 MR. MCGILLIVRAY: "Pilot" means any
9 person not belonging to a ship who has the conduct
10 thereof, and I think that means that therefore any
11 provision in Part VI that refers only to "pilot" and
12 not to "licensed pilot" would extend to a pilot under
13 Part VIa.

14 MR. BRISSET: Even though the first
15 paragraph of Section 362 speaks of a pilot deprived
16 of his licence?

17 MR. MCGILLIVRAY: Yes. I have
18 considered that in spite of that subsection (2) would
19 apply to the limited liability of Great Lakes pilots.

20 MR. JACQUES: I must say I agree with
21 you.

22 MR. MCGILLIVRAY: That is good news!

23 MR. LALONDE: But this does not give
24 you more authority!

25 MR. JACQUES: It gives him moral
26 support anyway.

27 My lord, I should like to submit as
28 Exhibit 1363 the routine instructions to supervisors
29 and superintendents of pilots respecting pilot
30 discipline. This was sent to Captain Gendron,
Captain Eddy, Captain Latter, Captain Parker,



1
2 Captain MacKinnon and Captain Hamel. The instructions
3 are dated February 14, 1961, and the covering letter
4 is dated March 29, 1961.

5
6 ---EXHIBIT NO. 1363 - The routine instructions to
7 supervisors and superintendents
8 of pilots dated February 14,
9 1961, and covering letter of
10 March 29, 1961

11 I would like also to file two samples of a
12 "show cause" letter. Both are dated August 11, 1964.
13 One is for the Montreal district and one is for the
14 Quebec district.

15
16 ---EXHIBIT NO. 1364 - "Show cause" letters dated
17 August 11, 1964

18 Mr. McGillivray, before we part I should
19 like to know if at any time the Department has pro-
20 ceeded under Section 369 or Section 370 of the Act.

21 MR. MCGILLIVRAY: I cannot speak from
22 personal knowledge here. I am informed by Captain
23 Slocombe that that is what was always used before I
24 became involved in the business.

25 MR. JACQUES: Might we then ask the
26 Department to supply us with an example of one such
27 case?

28 MR. MCGILLIVRAY: Yes.

29 MR. JACQUES: With reference to
30 Section 552 of the Act -- has it ever been used in
a case where a pilot was involved?



1
2 MR. MCGILLIVRAY: I would not think so.
3 As I said, this applies only to accidents on board
4 the ship and unless the pilot became injured in some
5 way aboard a ship I do not imagine it would have been
6 used. I cannot recall any case where it has been
7 used at all.

8 THE CHAIRMAN: You have asked Captain
9 Slocombe to ascertain the information and he said
10 there were none to his knowledge.

11 CAPTAIN SLOCOMBE: There is one fairly
12 recently in which this section was mentioned, but it
13 was mentioned by mistake. I have noticed one case
14 lately in which this was mentioned.

15 MR. JACQUES: Section 555 et seq,
16 which are preliminary inquiries into casualties,
17 would be used, I imagine, quite often by the Depart-
18 ment in respect to pilotage.

19 MR. MCGILLIVRAY: Preliminary inquiries
20 are frequently called. It is rather difficult to say
21 if it was used in respect of pilotage. Any time a
22 preliminary inquiry is ordered there is a very good
23 possibility that something will turn up relating to
24 someone other than the pilot who should be investigated.
25 It is a fact that as a result of preliminary inquiries
26 it has been decided that something should be done in
27 connection with pilot discipline.

28 MR. JACQUES: Section 558 deals
29 with formal investigations. Would you know if any
30 formal investigation was held on a pilot when there
was no casualty?



1
2 MR. MCGILLIVRAY: I think I can say that
3 such has not been the case in the last 15 years.

4 MR. JACQUES: Section 579 was the last
5 one. We have heard all about that.

6 MR. MCGILLIVRAY: We have heard too
7 much about that.

8 MR. LANGLOIS: What are the rules
9 governing preliminary inquiries before the investi-
10 gating officer?

11 MR. MCGILLIVRAY: There are no rules
12 beyond what is stated in Sections 555, 556, 557 and
13 the Shipping Casualties Rules.

14 MR. JACQUES: P.C. 1954-1861.

15 MR. MCGILLIVRAY: And there is very
16 little reference to them in the Shipping Casualties
17 Rules.

18 Perhaps I could read the only material
19 sections. Section 3 of the Shipping Casualties
20 Rules states:

21 "A person appointed by the Minister to hold
22 an inquiry --"
23 and inquiry has been defined as preliminary inquiry --
24 "--may be notified by telegram, letter or
25 otherwise of such appointment and upon receipt
26 of such notification may proceed to investigate
27 the causes which led to the casualty, examine
28 witnesses and generally adduce evidence in
29 connection therewith for the sole information
30 of the Minister."

This item and wording "for the sole



1
2 information of the Minister" may explain why there
3 was difficulty in obtaining transcripts of the
4 evidence taken by the officer conducting the preliminary
5 inquiry. Certainly I do recall a time when nothing
6 would be revealed outside the Department of what went
7 on in the preliminary inquiry. At that time, however,
8 I do not think it was the practice to base the findings
9 in connection with an allegation of default on the
10 part of a pilot on the evidence adduced at the
11 preliminary inquiry.

12 THE CHAIRMAN: When you do that you
13 go one step further? It was just for the information
14 of the Minister in order to direct further investi-
15 gation or whatever course of action he wished to take
16 afterwards, and when you go one step further to use
17 this evidence against a pilot then you are obliged
18 to make it known to the pilot?

19 MR. MCGILLIVRAY: Yes.

20 MR. LANGLOIS: Can you use this evidence
21 against the pilot?

22 MR. MCGILLIVRAY: That is a question
23 that might be argued. I am not too sure what you
24 mean by that but if you mean could it be introduced
25 into subsequent legal proceedings ---

26 MR. LANGLOIS: Such as a formal inquiry,
27 for example.

28 MR. MCGILLIVRAY: I do not think it
29 would be intended ever to introduce it into a formal
30 inquiry. The preliminary inquiry and the report on
it obviously is used by counsel to the formal



1
2 investigation as the basis for his questioning of
3 witnesses and so on. I do not believe that the
4 proceedings are normally entered into the record
5 of the formal inquiry.

6 CAPTAIN SLOCOMBE: I can tell you this.
7 A letter of instruction to counsel always stresses
8 that the evidence adduced at the preliminary inquiry
9 should not be used in the formal investigation.

10 MR. BRISSET: Is it not used in the
11 case of collision between a crown ship and another
12 ship to support the claim of the crown against the
13 other ship?

14 CAPTAIN SLOCOMBE: Would this be a
15 formal investigation?

16 MR. BRISSET: No, a preliminary
17 investigation.

18 MR. MCGILLIVRAY: You mean would it
19 not be used in evidence in subsequent litigation?

20 MR. BRISSET: Yes, or at least used
21 by the Department to make its case.

22 THE CHAIRMAN: For example, the Levis
23 Ferry case.

24 MR. BRISSET: That is one in particular.

25 MR. MCGILLIVRAY: I suppose the
26 Minister would find it very difficult to close his
27 eyes to it in his capacity as owner of the vessel
28 even though he has received it under his statutory
29 position under the Act.

30 THE CHAIRMAN: Even the Minister has
difficulty with conflicting interests.



1
2 MR. LALONDE: Is there any particular
3 reason why copies of the instructions have been sent
4 to the local superintendent in Quebec and not to the
5 one in Montreal nor the one in Cornwall?

6 MR. MCGILLIVRAY: I really would not
7 be able to answer that. I suppose the fact that
8 Captain Gendron was stationed in Montreal and would
9 have received a copy might have been sufficient, and
10 it is quite possible that the supervisor in Cornwall
11 had picked one up personally in the office. But I
12 do not think it would be possible to explain why
13 only certain people are mentioned in the letter.

14 MR. LALONDE: I have a few questions
15 in connection with the problem which is quite outside
16 this question of inquiry except very indirectly, and
17 I wonder whether you would be the person to answer
18 these questions or whether I should keep them for
19 someone else. It is in connection with the liability
20 of the Department for accidents occurring on board
21 the pilot boats owned by the Department. Have you
22 had occasion to study this problem?

23 I am informed that the attitude of the
24 Department has generally been that they would not
25 accept any responsibility. I have not seen the
26 direct material myself on this point. It was reported
27 to me that the attitude of the Department was very
28 negative as to any liability.

29 MR. MCGILLIVRAY: I am sure if the
30 Department were to adopt that attitude and if a pilot
were to be injured aboard the ship -- or any other
person -- and there were any substantial damages we



1
2 would end up in court.

3 MR. LALONDE: Perhaps you cannot give
4 it to me today but I would like to know what is the
5 formal legal attitude your Department takes in
6 connection with the carrying of pilots on their own
pilot boats from shore to sea or back.

7 THE CHAIRMAN: What do you mean by
8 the words "on their own"?

9 MR. MCGILLIVRAY: On the Department's
10 pilot boats?

11 MR. LALONDE: Excuse me, I mean the
12 Department's pilot boats. Is the attitude the same
13 as on any passenger ship having passengers aboard or
14 is the attitude different -- apart from not paying
the fare and all that?

15 MR. MCGILLIVRAY: This is not an easy
16 question to answer. I know, for instance, when the
17 matter of certification of the vessels was considered --
18 whether they should be certificated as passenger ships
19 or not as passenger ships -- I am fairly sure the
20 decision was taken that while there may be some doubt
21 whether pilots fall within the terms of the definition
22 of "passenger", they should be certificated as passenger
23 ships and carry lifesaving equipment and so on in
24 accordance with the requirements for passenger ships.
That was the decision taken on that.

25 With regard to whether pilots would be
26 considered as passengers in any particular circum-
27 stances, we would pretty well have to have a
28 particular case to consider, for instance if a pilot
29
30



1
2 is injured whether he is a gratuitous passenger or
3 not. I have never studied this and I would not have
4 occasion to do so unless a claim were made against
5 the Department for damages.

6 MR. LALONDE: Is it correct to conclude,
7 then, that as far as the Department is concerned no
8 policy has been defined and no legal stand has been
9 taken at all in this connection.

10 MR. MCGILLIVRAY: To the best of my
11 knowledge none has and none would be unless a set
12 of facts arose which would raise the question whether
13 the Department is liable in damages to a pilot who
14 has been injured.

15 THE CHAIRMAN: In the provinces where
16 such matters are dealt with by a provincial board
17 there is no problem because the government is going
18 to pay.

19 MR. MCGILLIVRAY: Yes. Of course, I
20 do not know whether pilots are covered.

21 THE CHAIRMAN: Some were, like British
22 Columbia up to about two years ago when they switched
23 to private insurance, and some other provinces also.
24 Some others are not. In some provinces it would be
25 found that the board do not consider them as employees,
26 while in other provinces the board considers them as
27 employees.

28 MR. JACQUES: Of the pilotage
29 authorities?

30 THE CHAIRMAN: Of the pilotage
authorities.



1
2 MR. LALONDE: I cannot understand my
3 friend's attitude of "wait until I have a case and
4 we will see". On the other hand ---

5 MR. MCGILLIVRAY: My point there, my
6 lord, is I see very little reason why we should under-
7 take a legal study of the question of the status of
8 the pilot on board the ship unless someone raises the
9 question. If it has been raised by the pilots, I am
10 sure we must be studying it although I myself have
11 not been doing so.

12 MR. BRISSET: Perhaps my friend is
13 meaning that he would like to know whether the
14 Department would accept responsibility for injury
15 to a pilot on board a pilot boat irrespective of
16 negligence or not on the part of the pilot boat or
17 the crew of the pilot boat.

18 MR. LALONDE: What I had in mind was
19 whether the liability of the Department will be
20 considered by the Department as the same as any other
21 owner of a ship having a passenger on board or
22 whether the attitude is different, whether you apply
23 the usual liability rules which would apply when you
24 have a passenger on board and there is an accident,
25 or whether the Department's attitude is different in
26 the sense that you would not consider in the case of
27 the liability of the pilot that he is a passenger in
28 the usual sense.

29 THE CHAIRMAN: And the question that
30 is asked there is not a legal opinion which you are
asked to give but the attitude of the Department, the
actual attitude of the Department, if there is one.



1
2 MR. MCGILLIVRAY: I must say that I
3 am not aware, my lord. If the Department were asked
4 to express their attitude they probably would first
5 ask for a legal opinion as to the status of the pilot
6 aboard the ship, and we would then have -- this being
7 a reasonably important question -- to apply to the
8 Department of Justice for an opinion. The Department
9 of Justice does not like giving opinions on hypothetical
10 cases. However, if the pilots were to come in and
11 say they wanted this ruling or legal opinion because
12 they wanted to decide whether or not they would have
13 to have insurance, or something like that, possibly
14 we could get an opinion from the Department of Justice.

15 MR. LALONDE: This is the point, my lord.
16 When pilot boats are operated by private contractors
17 great care is taken to see what kind of insurance is
18 held and there is generally sufficient insurance, and
19 all that sort of thing. In the case of government
20 boats there does not seem to be any insurance.

21 MR. MCGILLIVRAY: But surely the
22 insurance carried by the private operator is public
23 liability insurance.

24 MR. JACQUES: Not in all cases. In some
25 cases there is a section called medical payment where
26 the pilot or passenger would be entitled to medical
27 payment for injuries regardless of negligence on the
28 part of the boat operator.

29 THE CHAIRMAN: This goes with liability
30 anyway.



1 MR. MCGILLIVRAY: I must say this,
2 my lord. I think this is quite an important question
3 and one on which I would not want to give an off-the-
4 cuff opinion. I would like to know if it has been
5 raised with the department.

6 THE CHAIRMAN: It could be a question
7 of torts against the Crown.

8 MR. MCGILLIVRAY: I wonder if this
9 question has been raised with the department.

10 MR. LALONDE: I don't know of any
11 court cases that have been tried.

12 MR. MCGILLIVRAY: Has the depart-
13 ment been asked its attitude?

14 MR. LALONDE: I am informed that
15 this matter was raised several years ago by Pilot
16 Brochu.

17 MR. JACQUES: Which one?

18 MR. LALONDE: Of the Quebec District,
19 Henri Brochu. That would be before 1960, I am sure.

20 MR. MCGILLIVRAY: Was it as a
21 result of his suffering an injury?

22 MR. LALONDE: No. I think it was
23 more on his quality as president of the pilots of the
24 district, trying to find out where they stood.

25 MR. MCGILLIVRAY: I must say that
26 whatever the department's official attitude on it is
27 must be contained in the reply to that letter which I
28 am not aware of.

29 THE CHAIRMAN: Which we are going
30 to ask Captain Slocombe to try and find out, if at all



1 possible.

2 MR. LALONDE: The same problem, my
3 lord, could arise also in connection with the use, for
4 instance, of an icebreaker in the harbour of Quebec
5 and in Three Rivers to board and disembark pilots
6 in the wintertime. The department has to use that
7 means once in a while.

8 THE CHAIRMAN: Yes.

9 MR. LALONDE: There again the
10 pilots don't know too much where they stand liability-
11 wise in these particular circumstances.

12 THE CHAIRMAN: This is a good ques-
13 tion. In any event Captain Slocombe is going to find
14 out whether he can trace that letter and perhaps for
15 your part you could give him a more complete descrip-
16 tion of this letter, its date, and so on. It will
17 help to find it.

18 MR. BRISSET: If I may say some-
19 thing here, my lord. The department has accepted
20 liability in the past for damage caused to vessels by
21 pilot boats in cases where there has been negligence on
22 the part of the pilot boat in approaching the vessel.

23 THE CHAIRMAN: This is whether or
24 not the pilot boat was operated by the pilots or by
25 Crown employees?

26 MR. BRISSET: Yes, or by the crew
27 of the Crown.

28 THE CHAIRMAN: This I was aware of.
29 Any further questions on this matter?

30 This concludes now the Department of



1 Transport hearing for this week.

2 MR. LALONDE: My lord, there are
3 other documents which I have requested in the course
4 of cross-examination. I would hope they could be
5 filed tomorrow.

6 THE CHAIRMAN: Oh, yes.

7 MR. LALONDE: I may ask some
8 questions on these documents.

9 THE CHAIRMAN: That would be from
10 Captain Slocombe.

11 CAPTAIN SLOCOMBE: We have two here.

12 THE SECRETARY: I may perhaps indi-
13 cate to Captain Slocombe what these documents are.
14 The first one was asked for a few days ago. There
15 was a question whether it was a confidential document,
16 the proceedings at the court martial on the alleged
17 drunkenness of an Escoumains pilot on board the
18 ARROW on the 3rd of August, 1962, together with DOT
19 memorandum in connection therewith.

20 THE CHAIRMAN: Excuse me. Rather
21 than just giving them out here, you can make a list
22 for Captain Slocombe and what we have available now
23 we can proceed with if at all possible. We are
24 going to have one day tomorrow and we will finish
25 tomorrow, and I think if it is only a matter of a few
26 minutes Captain Slocombe can come back with anything
27 he has.

28 We will adjourn for a few minutes
29 in order that we can sort these documents out and
30 perhaps also you might show those documents to Mr.



1 Lalonde and Mr. Brisset and Mr. Langlois and they
2 can prepare their cross-examination on them.

3
4 ---Short recess.

5 ---Upon resuming.

6
7 THE SECRETARY: My lord, if I might
8 just give you an explanation. I have reviewed with
9 Captain Slocombe and Mr. Lalonde the documents which
10 are to be filed that were entered into the record.
11 While Captain Slocombe may have one or two, he prefers
12 to wait until tomorrow to file what he has with what
13 remains to be filed in order to be in a position to
14 give a better explanation of these documents.

15 THE CHAIRMAN: Did you say tomorrow
16 afternoon?

17 THE SECRETARY: Or tomorrow morning.

18 CAPTAIN SLOCOMBE: Tomorrow morning,
19 I am sure, would be fine, my lord.

20 THE CHAIRMAN: Tomorrow morning we
21 have the Department of Labour, Mr. Johnstone, and we
22 have also the National Harbours Board and in the
23 afternoon we have the Canadian Marine National Employees
24 Association.

25 THE SECRETARY: I would suggest,
26 my lord, that if Captain Slocombe is prepared to come
27 back tomorrow morning with the documents we can clear
28 the record before we embark on any examination of the
29 National Harbours Board.

30 THE CHAIRMAN: That is all right.



1 CAPTAIN SLOCOMBE: If you don't mind,
2 my lord, Captain Jones will be out at a meeting with
3 Captain Stevenson here in the morning from nine to ten.
4 If we could have the National Harbours Board first
5 I could start later.

6 THE CHAIRMAN: That is all right,
7 so you will come back at about eleven o'clock?

8 CAPTAIN SLOCOMBE: Very good, my
9 lord.

10 THE CHAIRMAN: Is there anything
11 further?

12 MR. LALONDE: I understand that to-
13 morrow we have the National Harbours Board first?

14 THE CHAIRMAN: We have the Depart-
15 ment of Labour, finishing up Mr. Johnstone, and then
16 we have the National Harbours Board and if it does
17 not take all morning we will continue with the DOT and
18 then in the afternoon we have the Canadian Marine
19 National Employees Association and this will terminate
20 what we have for this week and then we will adjourn
21 until the 19th.

22 MR. LALONDE: Has the National
23 Harbours Board a brief?

24 THE SECRETARY: No, no brief. They
25 will be coming before you, my lord, to answer questions.

26 THE CHAIRMAN: So we will adjourn
27 now until tomorrow morning at ten o'clock.

28 ---Adjournment.
29



ROYAL COMMISSION

ON



PILOTAGE

HEARINGS

HELD AT

OTTAWA

VOLUME No.:

150

DATE:

Sept. 30, 1964

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ROYAL COMMISSION ON MARINE PILOTAGE

Proceedings of the hearing held
in the Exchequer Court Building,
Ottawa, Ontario, on Wednesday,
the 30th day of September, 1964.

COMMISSION

| | |
|------------------------------------|-----------|
| The Honourable Mr. Justice Bernier | Chairman |
| Mr. Robert K. Smith | Member |
| Mr. Harold A. Renwick | Member |
| Mr. Gilbert Nadeau | Secretary |

COMMISSION COUNSEL

Mr. Maurice Jacques

PRESENT

| | |
|----------------------|--|
| Mr. J. Brisset, Q.C. | for the Shipping Federation of Canada |
| Mr. Marc Lalonde | for the Federation of St. Lawrence River Pilots; Cor- poration of the Lower St. Lawrence Pilots; Corporation of Montreal Harbour Pilots; Corporation of the Mid-St. Lawrence Pilots; Corporation of the St. Lawrence River and Seaway Pilots; Corpora- tion of the Upper St. Lawrence Pilots |
| Mr. R. Langlois | for the Canadian Merchant Service Guild |
| Mr. R. McGillivray | for the Department of Transport |



19750

September 30, 1964
Ottawa

1 ---UPON COMMENCING AT 10:05 A.M.

2 MR. H. S. JOHNSTONE, Sworn

3 DIRECT EXAMINATION BY MR. JACQUES:

4 Q. I believe that you were to
5 prepare information for the Commission yesterday; have
6 you had time to prepare that information?

7 A. I think we have it all. I submit
8 herewith a list, a statement of the dates of requests
9 received from the Department of Transport for a review
10 of ships' pilots' rates in several areas of Canada --
11 St. John's, Newfoundland, Sydney, Nova Scotia, Halifax,
12 Nova Scotia, / ^{Saint} John, New Brunswick, the St. Regis/
13 Cornwall/Kingston District, the Port Weller/Sarnia
14 District and the Sault Ste. Marie District -- together
15 with the dates that we made the recommendations to the
16 Department of Transport.

17 MR. JACQUES: I should now like to file
18 this document as Exhibit No. 1365.

19 ---EXHIBIT NO. 1365: Monthly wage recommendations by
20 Department of Labour for ships'
pilots in Canada from 1959 to date.

21 THE WITNESS: This is a copy of a letter
22 from Marc Lalonde dated February 26th, 1962 to which
23 was attached a short memorandum concerning a salary
24 request for professional Great Lakes pilots, together
25 with the copy of the memorandum.

26 Q. Thank you. I should like to
27 file this document as Exhibit 1366. It is entitled
28 Letter from Maitre Marc Lalonde to the Assistant
29 Director, Industrial Relations Branch, dated February
30 26th, 1962, together with memorandum concerning the



1 earnings of the Canadian pilots in Great Lakes Pilotage
2 District No. 2.

3 ---EXHIBIT NO. 1366: Letter dated February 26th, 1962
4 from Marc Lalonde to Assistant
5 Director, Industrial Relations
6 Branch, Department of Labour,
7 together with memorandum concerning
8 earnings of Canadian pilots in
9 Pilotage District No. 2.

10 THE WITNESS: I have one more. The date
11 on it is obscure. The date received there is April
12 4th, 1963. This is a copy of a document received in
13 our office on April 4th, 1963. It was addressed to
14 Captain D. R. Jones, Superintendent of Pilotage,
15 Ottawa, with a carbon copy to Mr. Roy Baxter, a carbon
16 copy to the Department of Labour and a carbon copy to
17 Treasury Board. This is a submission by nine pilots
18 concerning the rate of remuneration they are asking.

19 MR. JACQUES: Q. The Halifax pilots?

20 A. In the letter they refer to
21 the qualifications for Halifax Pilotage District
22 requiring the applicant to hold a Master's certificate,
23 etc.

24 Q. I should like to file this
25 document as Exhibit 1367. It is entitled memorandum
26 from the Halifax pilots to the Superintendent of
27 Pilotage, dated March 29th, 1963 with respect to
28 earnings of pilots in that District.

29 A. Not so much earnings as requests.

30 Q. Requests for salary to be paid
to pilots in the event of government employment of
pilots in that District?

A. That is right.



1 ---EXHIBIT NO. 1367: Memorandum from Halifax pilots to
2 the Superintendent of Pilotage
3 dated March 29th, 1963 with respect
4 to requests for salary of pilots
5 in the event of government employ-
6 ment of pilots in that District.

7 THE WITNESS: That is all that we have
8 prepared.

9 MR. JACQUES: Thank you.

10 THE WITNESS: I think that was all that
11 was requested by way of actual copies.

12 -----
13 CROSS-EXAMINATION BY MR. LALONDE:

14 Q. Now, Mr. Johnstone, after having
15 received from the Department of Transport information
16 as to hours worked per pilot in District 1 -- that is,
17 Cornwall/Kingston -- and District 2 -- that is, Port
18 Weller/Sarnia -- would you have taken into consideration
19 in arriving at the salary the comparative number of
20 hours worked per pilot in each area?

21 A. No, that was not an important
22 factor in determining the monthly rate for the duties
23 performed.

24 Q. I understand that was not
25 indeed, because it was stated yesterday that you had only
26 rough estimates without having any actual figures.

27 A. Yes. We had estimates from
28 time to time and oral discussions from time to time
29 with Department of Transport officials.

30 Q. Could you find in your files
any letter or memo from the Department of Transport
providing you with estimates of hours worked in



1 District 1 and District 2? I asked that yesterday.

2 A. Excuse me while I go through
3 my files.

4 Q. Yes.

5 A. In January, 1960 we were given
6 a statement by George G. Leesk and included in that was
7 the statement that the average number of hours worked
8 per day during the season, including travelling time,
9 in the Kingston District was 8 hours and 22 minutes.

10 Q. That is for 1960. Would you
11 mind providing that information to the Commission?
12 Could this be filed and copies of the documents could
13 be returned to you, or you could retain the original
14 upon permission? Could these be taken out of your
15 files?

16 A. Well, we do not like to take
17 them out of our files. It would be better to provide
18 a copy of this particular piece of information for
19 the retention of the Commission.

20 MR. LALONDE: Could we give it a number
21 right away?

22 THE CHAIRMAN: 1368.

23 ---EXHIBIT NO. 1368: (To be produced) - Memo from
24 George G. Leesk to Mr. Johnstone
25 dated January 14th, 1960, together
26 with information concerning
27 Montreal Harbour pilots, Kingston
District pilots, Montreal River
District and Quebec District
pilots.

28 MR. LALONDE: Q. It has on here "Mr.
29 Johnstone", however. Annexed to that memo is information
30 concerning Montreal Harbour pilots, Kingston District



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1 pilots, Montreal River District and Quebec District
2 pilots.

3 A. I see there is a carbon copy
4 here which I think I could leave with the Commission --
5 the covering letter. If the statement itself will
6 do I will take it off.

7 Q. We will need the memo.

8 A. You will need the memo too?

9 Q. Yes.

10 A. Well then, I will make copies.

11 MR. LALONDE: January 14th, 1960.

12 THE SECRETARY: From Captain Leesk to
13 whom?

14 MR. LALONDE: To Mr. Johnstone.

15 Q. I notice that this document
16 in 1960 which you received, however, did not provide
17 you with any information as to average number of hours
18 worked in the Port Weller/Sarnia District; is that
19 correct?

20 A. No, it is not on there.

21 Q. It is not on that?

22 A. No.

23 Q. Is it fair to conclude that
24 you did not have the information concerning that District?

25 A. At that time I would say that
26 would be the case.

27 Q. Did you receive further
28 information later on in that respect?

29 A. We received a statement of
30 pilots' workload 1960 season of navigation through



1 August 31st, 1961, dealing with Kingston, Montreal
2 Harbour, Montreal River and Quebec, and it gives the
3 average daily time of duty per pilot for those four
4 Districts.

5 Q. There again you did not have
6 a copy of the information concerning District number 2
7 pilots?

8 A. That is right --just this.

9 Q. Would you annex a copy of this
10 document when you file it with the Commission under
11 the same number?

12 A. We will.

13 Q. Did you receive anything
14 further?

15 A. No, not by way of documents on
16 this file. I have some others I am going through.

17 Q. Yes. Did you have notes or
18 memos of information obtained otherwise, and to what
19 effect was that information?

20 A. I have notes of the discussion
21 of ours in the meeting in the office of the Director
22 General of Marine Services, Department of Transport, in
23 which I inquired of Transport officials concerning the
24 present arrangement of the Port Weller to Sarnia where
25 pilots were paid \$1,200.00 a month.

26 Q. Yes?

27 A. And the Department of Transport
28 official replied that the pilots were on the vessels
29 about 66 hours a week but the average work week in which
30 the pilot was actually guiding the vessels was 34 hours.



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1 The balance of the time was spent sleeping or resting.

2 Q. I see, and this meeting is what
3 date?

4 A. December 6th, 1960.

5 Q. And this was just a statement
6 made by some officials of the Department of Transport?

7 A. Yes.

8 Q. I understand you were never
9 provided with documents of any sort supporting that
10 statement one way or the other; is that correct?

11 A. That is my understanding.

12 Q. And you were satisfied with the
13 information given by the Department of Transport? That
14 was final as far as you were concerned -- that is
15 correct?

16 A. Yes.

17 Q. In subsequent years did you
18 have the same information when you had subsequent
19 requests?

20 A. Yes, I believe so.

21 Q. Would you check?

22 A. Yes, I will. We received a
23 statement from the Department of Transport on March
24 29th, 1962 which gave a comparative listing of pilots'
25 earnings and workloads for Halifax, / Saint John, Sydney,
26 Quebec, Montreal River, Montreal Harbour, Cornwall/
27 Kingston, and the last item on the right is a heading
28 "Hours piloting today."

29 Q. This was for 1959, 1960 and 1961?

30 A. Yes. I believe you have that.



1 Q. Would you mind annexing this
2 document to the items already referred to when you
3 make copies?

4 A. Yes.

5 Q. Thank you, and this was the
6 only information you had on this occasion?

7 A. On hours, yes.

8 Q. On hours?

9 A. That is all we could find. We
10 have searched the files carefully.

11 In 1964 we received, on March 5th
12 a letter from the Department of Transport, dated March
13 4th, to which is attached a comparative statement
14 of pilots' earnings and workload. The last column on
15 the right is headed "Hours piloted per effective
16 pilot". I believe the totals would be the total hours
17 for the season.

18 Q. This was for 1961, 1962 and 1963?

19 A. That is right.

20 Q. Would you mind annexing this
21 copy to the documents you have to send?

22 A. Very well. We will send it
23 in.

24 Q. To the Commission?

25 A. To the Commission. We also have
26 this statement, of which you already have a copy.

27 Q. Yes. And this was all the
28 information you had?

29 A. We have searched our files
30 and that is all we have.



1 Q. That is all the information you
2 had concerning the workload in the Port Weller-Sarnia
3 District?

4 A. Yes, sir.

5 Q. As a rule, Mr. Johnstone, if
6 you are comparing the earnings of two groups of
7 employees doing the same type of work, except that in
8 one case you would have an apparently substantially
9 higher workload than in another case, would you take
10 this into consideration in evaluating the earnings or
11 salaries?

12 A. By a higher workload do you
13 mean longer hours of work?

14 Q. Let us say you have one
15 employee doing 40 hours a week and the other doing
16 60 hours a week of the same work. In assessing the
17 salaries in your Branch would you take this into
18 consideration in arriving at a monthly salary or a
19 weekly salary?

20 A. Most of our recommendations for
21 prevailing rate employees are hourly recommendations
22 and if the comparative wage data establishes the rate
23 for a week in private employment, they must know the
24 hours worked in arriving at the equivalent hourly rate.

25 Q. Yes?

26 A. When we are establishing monthly
27 rates -- we seldom establish weekly rates -- when we
28 are recommending monthly rates --

29 Q. Yes?

30 A. We do not delve into the hours



1 worked unless there is a marked and continuous
2 difference.

3 Q. I see.

4 A. If, for instance, we are
5 dealing with seamen --

6 Q. Yes?

7 A. We recommend monthly rates and
8 we find that private industry seamen are working seven
9 days a week for which they receive X dollars and we
10 are asked to make a recommendation for a monthly rate
11 where the workload is 40 hours, then we have to
12 evaluate that situation for the equivalent monthly
13 remuneration for the equivalent hours worked by the
14 government employees. That is where you need knowledge
15 of a definite and continuous pattern of hours worked.

16 Q. Now, what would you consider
17 a substantial difference or a difference worth taking
18 notice of between hours worked in one Pilotage
19 District compared to another Pilotage District; 10%,
20 15%?

21 A. We have not arrived at any
22 figure. We know the hours of work of the self-employed
23 pilots and the hours worked by the salaried employees
24 varied considerably from day to day.

25 Q. Yes. However, over a period of
26 a year, for instance, you may arrive at a total figure.
27 Would you not take that into consideration?

28 A. We have not in this case, no.

29 Q. Is there any particular reason?

30 A. Well, there is difficulty about



1 ascertaining the hours worked, the variability of the
2 hours and even some uncertainty as to what constitutes
3 hours worked, whether it was hours worked when the
4 man was really guiding the ship or whether he was
5 waiting in a vessel while they were passing through
6 designated waters or whether he was kept on the vessel;
7 whether he had no duties and was being transported.

8 THE CHAIRMAN: Or even more so being
9 available in case of demand.

10 THE WITNESS: That is right.

11 MR. LALONDE: Q. To make a comparison
12 between District #1 and District #2, what was your
13 definition of hours worked?

14 A. We did not use hours worked?

15 Q. Not at all?

16 A. No.

17 Q. I am showing you a document
18 produced before this Commission and filed with the
19 Commission by the Department of Transport officials,
20 referring you to Exhibit 1298. We have this document
21 entitled "Summary of pilots' time on assignment, 1962".
22 You have the various Districts in Canada and first
23 you have a reference to District #2?

24 A. Yes.

25 Q. And District 1?

26 A. Yes.

27 Q. You have, for instance, in 1962
28 the number of hours on assignment of 3,576.1 in
29 District #2 and 1,961 in District #1?

30 A. Yes.



1 Q. Do you think this is a suffi-
2 ciently wide difference to take notice of it in the
3 calculation of earnings?

4 A. Well, what is meant by "hours
5 on assignment"? Is that availability for duties
6 or actual duties performed?

7 MR. JACQUES: You were setting the rates.
8 You should know.

9 THE CHAIRMAN: Apparently he has not
10 seen these documents.

11 THE WITNESS: I have not seen them. I
12 don't know what the terms mean.

13 MR. LALONDE: Q. I am showing you here
14 a document produced as Exhibit 1301 by the Department
15 of Transport again giving the comparative statement
16 of pilots' earnings and workload for 1961, 1962 and
17 1963?

18 A. Yes.

19 Q. You will notice this document
20 is very similar to the one -- not identical -- you
21 referred to previously in your evidence?

22 A. Yes.

23 Q. This also brings the figures up
24 to date?

25 A. Yes.

26 Q. There is a third page entitled
27 "Great Lakes Basin". The last column is "Hours on
28 assignment per year per effective Canadian pilot for
29 1961, 1962 and 1963". You will notice the comparative
30 figures between #1 and #2 are as follows: #1 is 1436,



1 1461 and 1349 for 1961, 1962 and 1963 while there are
2 3,562, 3,292 and 2,314 for the same years in District #2.

3 Certainly you would think this
4 is a substantial difference, would you not?

5 A. Arithmetically, yes.

6 Q. I understand you have never seen
7 these documents?

8 A. No.

9 Q. Never been provided with that
10 type of information?

11 A. No. I can't recall having seen
12 either of these documents.

13 Q. Now that you have seen that
14 document, would you infer from this that these figures
15 should be taken into account in arriving at salaries
16 for District #2 pilots?

17 A. No, I wouldn't make any inference
18 until I had had an opportunity to study the document
19 and the meaning of the phrasing at the top here.

20 Q. Under what definition would you
21 take it into account?

22 A. Well, if we were asked to provide
23 an hourly rate for pilots we would certainly have --

24 Q. Sorry?

25 A. If we were asked to provide a
26 recommendation of an hourly rate for pilots then we
27 would have to take into consideration the hours worked.

28 Q. You have stated you never went
29 into this. You were asked to provide a monthly rate.
30 Let us keep the same assumption. You said it would



1 depend on the meaning of hours on assignment if you
2 were to take this into account or not. My question
3 then is: What meaning would you require to take these
4 figures into account in establishing a monthly rate,
5 as you have done in the past?

6 A. Well, when we examine the
7 hours for purposes of determining the equivalent
8 hourly rate where an employee is paid weekly or
9 monthly, generally we refer to hours worked.

10 Q. Yes, and so for you hours on
11 assignment would need to mean hours worked; is that
12 correct?

13 A. No. I merely stated what our
14 general concept is. Hours on assignment as a term,
15 I suppose, has different meanings for different people
16 who use it.

17 Q. Yes. Here it was used --

18 A. It is sort of the gray area
19 of whether you are an employee if you are available
20 and that depends on whether you are available on the
21 job or available in your home.

22 Q. Yes, but once again these are
23 figures filed by the Department of Transport with
24 this Commission and my question is: What would you
25 require assignment to mean in order to take it into
26 account?

27 A. I have not worked out any
28 explanation of what I would require as an interpretation
29 of that phrase.

30 Q. If this were to mean hours



1 worked on a ship, the number of hours on the ship, would
2 you take that into account?

3 A. We would need to take it into
4 account if we were recommending an hourly rate.

5 Q. But you told me you have been
6 recommending a monthly rate all the time?

7 A. That is right.

8 Q. Then you would not take it
9 into account?

10 A. No, not if we are recommending
11 a monthly rate.

12 Q. So whatever the number of hours
13 worked, between one District and the other, you will
14 not take it into account?

15 A. We have not yet taken it into
16 account. We could change our procedure if circumstances
17 so indicated it was necessary.

18 Q. What circumstances would you
19 require?

20 A. Well, circumstances of being
21 asked to recommend an hourly rate.

22 Q. As long as you are going to
23 recommend a monthly rate, you will not take into
24 account hours worked at all?

25 A. I cannot say that would always
26 be our policy. This has been our policy heretofore.

27 Q. Did you determine that policy
28 yourself or is it the Department above you?

29 A. It is set forth in the prevailing
30 rate employees general regulations and general terms and



1 we interpret it in our judgment and if we are wrong
2 either the Department of Transport or Treasury Board
3 will call it to our attention or if we are in doubt
4 as to whether or not the Department will accept our
5 recommendation.

6 Q. I submit to you there is
7 nothing in the prevailing rate regulations that provides
8 that you should not take into account or that you
9 should take into account the number of hours worked
10 when you arrive at a monthly basis; is that correct?

11 A. No.

12 Q. Can you indicate to me --

13 A. No, the regulations do not
14 mention that point at all.

15 Q. So in effect it is in your
16 own judgment; you arrive at that conclusion in your
17 own judgment?

18 A. Well, the way we recommend
19 a monthly rate is, as I have explained before, we do
20 not take into account the hours worked either by
21 salaried pilots or self-employed pilots although we
22 do have discussions of hours worked.

23 Q. You also stated, if I under-
24 stood you correctly, that unless the policy was changed
25 by instructions from above you, I understood, you
26 would carry, ^{on} this rule of not taking into account the
27 hours worked when comparing one District with the other?

28 A. Our policy could be changed
29 if it seemed necessary to change it or it seemed
30 advisable to change it, but that has been our policy at



1 the present time.

2 Q. This policy was established
3 by you?

4 A. We were asked to recommend
5 rates and we recommended a monthly rate.

6 Q. What would you require to
7 change your policy?

8 A. A request to recommend an
9 hourly rate. That is one thing.

10 MR. LALONDE: We are running around in a
11 vicious circle. That is enough for me.

12 THE CHAIRMAN: Could we sum it up by
13 saying when you are establishing a monthly rate like
14 that, you are not comparing the workload and working
15 conditions because you assume that they are asking you
16 to recommend for a normal workload and normal working
17 conditions and should they ask you for something
18 abnormal, that would have to be pointed out to you?

19 THE WITNESS: I think that puts it
20 quite correctly, My Lord.

21 MR. LANGLOIS: Mr. Johnstone, if you
22 had to recommend an hourly rate in your general
23 concept of hours worked, would you establish a difference
24 between night hour and day hours of work?

25 THE WITNESS: No, we have not made a
26 recommendation on differentials between day and night
27 in dealing with prevailing rate employees. That is
28 established by Treasury Board, if they deem it advis-
29 able.

30 MR. LANGLOIS: You would not distinguish



1 either between regular hours of work and irregular
2 hours of work? For example, you realize a pilot is
3 not requested to be on the job from nine in the
4 morning til five o'clock in the evening. He is called
5 at very irregular times. You would not arrive at a
6 difference in the hourly rate taking that into
7 consideration, would you?

8 THE WITNESS: No. We have not done so.
9 I thought your question referred to differentials where
10 a person is regularly working at shifts. The question
11 of shift differential does not come within our
12 purview at all. The Departments usually pay
13 differentials. For instance, the Queen's Printer
14 always works at night oiling the printing machinery.
15 He is paid a differential which was approved by
16 Treasury Board without any action on our part.

17 MR. LANGLOIS: You do not take that
18 into consideration to evaluate the workload and
19 establish the rate the fact that he must work nights
20 or at other times work weekends?

21 THE WITNESS: We didn't in this case.

22 MR. LANGLOIS: If you had to establish
23 an hourly rate, would you?

24 THE WITNESS: I can't say. We have not
25 studied the situation to find out the pattern of work.

26 MR. JACQUES: I have a few more
27 questions, Mr. Johnstone.

28 DIRECT EXAMINATION BY MR. JACQUES:

29 Q. Your recommendations are made
30 to Treasury Board, I take it, under the prevailing rate



1 employees general regulations. Is that correct?

2 A. Most of them are made to
3 Treasury Board directly. For years we always made
4 our recommendations to the employing Department.

5 Q. I mean under the authority of
6 the prevailing rate employees regulations?

7 A. Yes, that is what I am
8 referring to. For years we made our recommendations --
9 all recommendations directly to the employing Department
10 who made the request and the Department in turn would
11 make a submission to Treasury Board for approval of
12 the rates but since April 1, 1963 there has been a
13 change in procedure and we make most of our
14 recommendations for prevailing rate employees to the
15 Treasury Board; but with respect to certain areas we
16 still make our recommendations direct to the employing
17 Department.

18 Q. I will read here Section 5 of
19 the prevailing rate employees regulations. I quote:
20 "The rate and conditions of pay, not including
21 additional remuneration by way of supervisory
22 differentials for employees in each unit of public
23 service shall be authorized under Treasury Board on
24 the basis of a recommendation of the Department of
25 Labour".

26 It seems to imply that whenever
27 one is a fixed rate or a prevailing rate employee
28 action~~is~~ taken by Treasury Board on your recommendation.
29 Is that correct?

30 A. Yes, the final action, of course,



1 the final decision rests with Treasury Board.

2 Q. I see.

3 A. We make recommendations on the
4 rate, not conditions. I do not recall ever making a
5 recommendation on conditions, if that means fringe
6 conditions.

7 Q. It says conditions of pay. It
8 doesn't say conditions of work; conditions of pay. I
9 take it then that in your work you are guided by these
10 regulations?

11 A. That is right.

12 Q. I will draw your attention to the
13 definitions which are given in Section 2 of these regu-
14 lations with respect to the normal number of working
15 hours. There has been a discussion of working hours.
16 Here I quote: "With reference to a day, it means the
17 number of working hours that is determined by the appro-
18 priate Deputy head to be the number of hours that an
19 employee is requested to work during that day." I also
20 will refer you to the definition of standard work week,
21 which is "the normal number of working hours determined
22 by the appropriate Deputy head to be the normal number
23 of working hours that an employee is required to work
24 during the period of seven consecutive days."

25 Now, with that in mind would you
26 explain, because I am still not able to see how you
27 proceeded, how you establish this monthly rate. To
28 me, pay, I should say, is essentially geared to the
29 number of hours that you work and the importance of the
30 work which you do.



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3 THE CHAIRMAN: Would that be true
4 for Saint John, New Brunswick, when you consider
5 the summer?

6 MR. JACQUES: I did not specify a
7 particular month. He was asked to establish a rate
8 and you cannot talk about rate or salary if you do
9 not know what the man does.

10 MR. JOHNSTONE: We establish the
11 monthly rate by obtaining the gross earnings of
12 the self-employed pilots in District 1. I have to
13 be careful of these numbers.

14 MR. JACQUES: District 1, yes.

15 MR. JOHNSTONE: Then we ascertain
16 the effective pilots who earn that lump sum.

17 MR. JACQUES: In District 1?

18 MR. JOHNSTONE: In District 1 --
19 and the approximate number of months in which they
20 earned that sum. We arrived at a rate per pilot
21 for gross earnings. Then we deducted from that the
22 claimed expenses of the pilots. Then we deducted
23 five per cent for the maintenance of their own
24 organization. Those expenses are expenses they
25 have to pay. Then we deducted the 10 per cent of
26 the four items of fringe benefits which the salaried
27 people receive, and we arrived at a figure of net
28 earnings per pilot per month.

29 We studied those figures and made our
30 recommendation. We usually study those figures
over a three-year earning period.



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3 MR. JACQUES: I see. But at no
4 time did you make an investigation into the amount
5 of work -- let us not say the number of hours --
6 which the pilots in District 1 did in fact do and
7 the amount of work which the pilots in District 2
8 would be requested to do?

9 MR. JOHNSTONE: No, it was not a
10 determining factor in those calculations.

11 MR. JACQUES: I still cannot under-
12 stand. If a man worked twice as much as the other
13 and, according to you, if he is on a monthly rate,
14 it does not matter?

15 MR. JOHNSTONE: No, I would not agree
16 that it does not matter. As his lordship described
17 it, we set a monthly rate for the work to be performed
18 by the pilots. We recommended a monthly rate for
19 the work to be performed without taking into account
20 that the hours worked by the self-employed pilots
21 may not be the same in general as the hours worked
22 by the salaried pilots.

23 MR. JACQUES: I admit to a slight
24 difference, but from what is submitted by the
25 Department it is twice and sometimes more than twice
26 the number of hours worked by District 1 pilots.
27 Conversely, you would have arrived at the same rate
28 for District 2 pilots if they had worked half as
29 much as District 1 pilots?

30 MR. JOHNSTONE: We did not take it
into account in determining our monthly rate.



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3 MR. JACQUES: When you make recom-
4 mendations -- and when I say you I do not mean you
5 personally -- do you feel that you are responsible
6 for the validity and the accuracy of the recommen-
7 dation?

8 MR. JOHNSTONE: We are held responsible.

9 MR. JACQUES: Then might it be said
10 that the duty to uncover all relevant information
11 is incumbent upon your section or your Department?

12 MR. JOHNSTONE: All relevant infor-
13 mation concerning our recommendation, yes. It is
14 our job to obtain that information and render a
15 judgment on it.

16 MR. JACQUES: Apart from receiving
17 documents from the Department of Transport, have you
18 made any investigation into the working conditions
19 of the pilots?

20 MR. JOHNSTONE: No, we do not
21 operate in the area of working conditions.

22 MR. JACQUES: How can you disassociate
23 salary from working conditions?

24 MR. JOHNSTONE: We have never been
25 asked to deal with working conditions for any
26 prevailing rate employees if by working conditions
27 you mean the place in which they work, the hazards
28 under which they work, the degree of skill required,
29 the fringe benefits they receive. We are not drawn
30 into that area at all.

MR. JACQUES: So your recommendation
is purely a mathematical affair regardless of what



1
2 happens, whether a man works or does not work,
3 whether he works more or less, whether his work is
4 more difficult or less difficult, more dangerous or
5 less dangerous?

6 MR. JOHNSTONE: It is a recommendation
7 for a rate of pay; it is not a recommendation for
8 fringe items or working conditions.

9 MR. JACQUES: Do you mean to tell me
10 that when you are setting a rate of pay -- hourly,
11 monthly or whatever it may be -- you arrive at a
12 given figure and that this figure does not take into
13 account the number of hours worked per day, per week,
14 per month, per year, the difficulties of the job, the
responsibilities involved? It does not?

15 MR. JOHNSTONE: No, it does not.

16 THE CHAIRMAN: In other words, it does
17 not take care of all the components of the contract
18 pilot.

19 MR. JOHNSTONE: We serve purely in an
20 advisory capacity, my lord, to recommend a rate when
21 we are asked to recommend a rate. We are not the
22 employer of these people. The departments employ
them.

23 THE CHAIRMAN: What I find amazing
24 is that you give a rate for something that is not
25 definite. It would be more logical, it seems to me,
26 if you were given a definition of the job, if it were
27 defined in all aspects with a work load of this or
28 that and work like this or that. Take for example
29 firemen. You know firemen are not going to have fires
30



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3 every day, eight hours a day, but they are waiting
4 day after day for a fire, so their work is to wait
5 and wait and to put out a fire when there is one.
6 The definition of the job and the working conditions
7 we would think, are components and elements of the
8 job which should be given to you prior to your making
9 an appraisal to enable you to compare this particular
10 type of job with the others in the same area.

11 MR. JOHNSTONE: We seek to obtain --
12 I am speaking generally -- the rates paid in private
13 industry for comparable duties performed.

14 MR. JACQUES: I must stop you right
15 there. If you do not ask what people do, how can
16 you compare? If you do not investigate the work
17 which is going to be performed, how can you tell
18 what it is?

19 MR. JOHNSTONE: When we recommend a
20 rate for carpenters employed by Public Works we
21 recommend the rate paid in private industry, but we
22 do not rule on the competence or the working conditions
23 of the privately employed carpenters or the government
24 employed carpenters.

25 THE CHAIRMAN: If you are asked to
26 give a rate for a carpenter you are going to give a
27 rate by the hour, but if you give a rate by the week
28 you are going to give the same rate if it is a 40-hour
29 week, a 50-hour week or a 58-hour week? There would
30 be a difference in the pay, would there not?

MR. JOHNSTONE: We make no recommen-
dations on a weekly basis; it is hourly or monthly.



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3 MR. JACQUES: With respect to
4 Exhibit 1365, monthly rate recommendations, I see
5 that recommendations were made with respect to St.
6 John's, Newfoundland, in December, 1960 -- \$600 a
7 month. Do you recall on what basis you made that
8 recommendation?

9 MR. JOHNSTONE: We examined the
10 earnings of self-employed pilots in the St. John's
11 harbour area.

12 MR. JACQUES: They were all then self-
13 employed?

14 MR. JOHNSTONE: I believe so.

15 MR. JACQUES: It is based on their
16 earnings at that moment?

17 MR. JOHNSTONE: Yes.

18 MR. JACQUES: With respect to Halifax
19 you also made a recommendation in December, 1960. On
20 what did you base that recommendation?

21 MR. JOHNSTONE: Without consulting
22 my files I would say that we made it on the same
23 basis as the self-employed pilots who are operating
24 in that area.

25 MR. JACQUES: What do you do when
26 you have a completely new position?

27 MR. JOHNSTONE: I do not recall any
28 such instance with respect to ships' pilots except
29 at Labrador in the early days when we used to recom-
30 mend a daily rate. I am not too sure that we had
data at Labrador. I think we took a look at the St.
John's, Newfoundland, data.



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3 MR. JACQUES: But you did not look
4 into the work of the pilots in Labrador?

5 MR. JOHNSTONE: No, we recommended
6 a daily rate after examining the relevant data,
7 which I believe was St. John's data.

8 MR. JACQUES: Would the number of
9 hours per week which are to be worked be a factor
10 which you would consider in setting or recommending
11 a monthly rate?

12 MR. JOHNSTONE: Where?

13 MR. JACQUES: For pilotage -- let us
14 take District 2.

15 MR. JOHNSTONE: It has not been a
16 factor.

17 MR. LANGLOIS: Have you ever recommen-
18 ded rates for pilots in the Saint John, New Brunswick,
19 harbour?

20 MR. JOHNSTONE: Yes, it is on that
21 statement.

22 MR. LANGLOIS: What was your reference
23 for Saint John, New Brunswick?

24 MR. JOHNSTONE: It would be the pilots
25 operating in that area, the self-employed pilots.

26 MR. LANGLOIS: What would have
27 happened if these rates had been accepted and you
28 were faced with the problem of granting a raise?

29 MR. JOHNSTONE: Well, we do not grant
30 raises. We will examine the rate again and make
another recommendation if a competent authority asks
us to do so.



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3 MR. LANGLOIS: But you would not
4 try to find out if they are working extra hours
5 or if the traffic is augmented, if the local traffic
6 conditions have changed? You would not take that
into account?

7 MR. JOHNSTONE: So far we have not
8 done so.

9 MR. LANGLOIS: If in other branches
10 you are asked to recommend rates for a specialized
11 type of profession what do you do? Do you ever meet
these people?

12 MR. JOHNSTONE: Name a profession.

13 MR. LANGLOIS: Geophysicists, for
14 example.

15 MR. JOHNSTONE: We have never been
16 asked to give a rate for geophysicists. They are
17 classified civil servants; they are not prevailing
rate employees.

18 MR. LANGLOIS: If you were to recommend,
19 would you think of interviewing these people and
20 finding out their particular conditions of work?

21 MR. JOHNSTONE: There may be a bit of
22 confusion about the term "conditions of work". What
23 we are seeking as the basis of our recommendation is
24 the rate paid in private employment in similar work;
25 that is the rate paid for duties performed. But we
26 have never been brought into the field of evaluating
27 the fringe benefits which these people might enjoy and
28 relating them to the fringe benefits of the government
29 employees, nor have we ever been brought into the field
30



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2 of examining the hazards under which they might
3 work as compared with the hazards under which
4 similarly named government employees work. Those
5 conditions of employment are not within our purview.

6 MR. LANGLOIS: Within whose purview
7 are they?

8 MR. JOHNSTONE: They are within the
9 purview of the employing department.

10 MR. LANGLOIS: Would you not think
11 it your duty to request this information when you
12 are asked to give an hourly rate from the pertinent
13 department?

14 MR. JOHNSTONE: No, we are concerned
15 with the rate of pay; that is all we are asked to
16 provide.

17 MR. LANGLOIS: Are you aware that
18 there are certain differences between the harbours
19 of Goose Bay, Labrador and St. John's, Newfoundland?

20 MR. JOHNSTONE: Differences in the
21 harbour?

22 MR. LANGLOIS: Yes, in the conditions
23 of the pilots.

24 MR. JOHNSTONE: No, we have not
25 examined the conditions of the pilots.

26 MR. LANGLOIS: They are in the same
27 geographical area.

28 MR. JOHNSTONE: We know they pilot
29 ships, but the conditions under which they work we
30 have not examined.

MR. JACQUES: On a question of
procedure let us take actual cases. The case
referred to in Exhibit 1365 is one on which you were



1
2 requested to make recommendations and we have the
3 data of your recommendation. Do you transmit a copy
4 of your recommendation to the requesting department?

5 MR. JOHNSTONE: In some cases we do.

6 MR. JACQUES: On Exhibit 1365 --

7 MR. JOHNSTONE: I do not know whether
8 we do in that case or not. Some departments ask us
9 as a routine matter to let them know what rates we
10 recommended to Treasury Board and we do so, but at
11 the moment I cannot say whether we have furnished
12 Transport with a copy of our recommendation to
13 Treasury Board. We do with National Defence and
14 some other departments.

15 MR. JACQUES: Apart from your
16 recommendations would the departments also make
17 recommendations to the Treasury Board?

18 MR. JOHNSTONE: Excuse me, I may
19 have explained incorrectly. Our recommendation
20 for ships' pilots with one exception have always
21 gone to the Department of Transport so your question
22 does not really apply, but I am thinking of prevailing
23 rates generally. For instance, when some departments
24 ask for a recommendation for plumbers and carpenters
25 and truck drivers, if that recommendation may have
26 application to other departments in the area who
27 employ truck drivers and carpenters and labourers,
28 then our recommendation is sent to Treasury Board
29 and when it is approved it is circulated to the
30 departments so they can use the new rate. Some of
those departments do ask us to send to them copies of



1
2 the recommendation we send to Treasury Board, and
3 we comply. With respect to ships pilots however,
4 our recommendations have gone direct to Transport.

5 MR. JACQUES: Can you recall the
6 exception? You said there was one exception.

7 MR. JOHNSTONE: It involved the
8 changed procedure. The recommendation of September
9 30, 1963, concerning Goose Bay, which is not on this
10 table, was sent to Treasury Board under the new
11 procedure.

12 MR. JACQUES: I note that two
13 entries have been stricken from this document.

14 MR. JOHNSTON: Goose Bay is not
15 on that. Goose Bay was not asked for.

16 MR. JACQUES: The two entries
17 which have been stricken would refer to Goose Bay --
18 one recommendation dated June 12, 1962, and the other
19 dated September 30, 1963.

20 MR. JOHNSTONE: June 12 is Goose
21 Bay, yes; and September 30, 1963, is Goose Bay also.

22 MR. JACQUES: Both are Goose Bay?

23 MR. JOHNSTONE: That is right.
24 The last one was sent to Treasury Board direct under
25 the new procedure.

26 MR. JACQUES: Under the old pro-
27 cedure was the recommendation made to the Department
28 or to Treasury Board?

29 MR. JOHNSTONE: Until April 1, 1963,
30 all recommendations were made to the departments.

MR. JACQUES: And now they are
made direct to Treasury Board?



Johnstone
(Jacques)

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3 MR. JOHNSTONE: Most of them
4 are now, but not all.

5 MR. JACQUES: It is a recommen-
6 dation to the Treasury Board?

7 MR. JOHNSTONE: Yes. It has
8 certain beneficial effects. It speeds up the procedure
9 and means that if we had five government departments
10 in Winnipeg all employing prevailing rate employees
11 under the old procedure Public Works might ask us to
12 review a series of rates and we would review them
13 and make a recommendation. They would obtain approval
14 and then they would pay them.
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1 And they would pay them, but the other four Departments
2 would be at the old rates. Unless they themselves
3 made requests and obtained similar recommended
4 revisions under the new procedure we make our
5 recommendation to Treasury Board and it circulates the
6 approval to the other Departments so that all
7 Departments can change the rates at the same time.

8 Q. I see. And again in order to
9 make quite sure that we understand your evidence --
10 with respect to working conditions for pilots, mind
11 you; I am not interested in anything else -- they
12 are paid a monthly rate. With respect to working
13 conditions, hours of work and difficulties of work,
14 danger of the work and qualifications required for
15 that particular work -- you do not bother with that?

16 A. We are not required to deal
17 with it.

18 Q. I understand that you are not
19 required to deal with that, but you do not bother
20 with that? You do not investigate that? You do not
21 take that into account?

22 A. Well, we take into account the
23 duties performed but not the conditions which you
24 described.

25 Q. You take into account the
26 duties performed?

27 A. We try, but it is a rate for
28 ships' pilots -- on the work of ships' pilots, not on
29 the work of some other classification.

30 Q. But you do not try to compare



1 the work as a ships' pilot in District 1 with the
2 work as a ships' pilot in District 2?

3 A. No. To us they are ships'
4 pilots in both Districts.

5 Q. In the abstract?

6 A. That is right -- performing
7 the normal duties of ships' pilots.

8 Q. There may be three locks in
9 District 1 and there would be eight locks in District 2
10 and it does not make any difference?

11 A. Not to us, no.

12 THE CHAIRMAN: With regard to Goose
13 Bay I would like to know what group of pilots you
14 compare with? Was that only the group of St. John's,
15 Newfoundland, or did you take into consideration
16 Botwood, Stephenville and Port aux Basques pilots who
17 receive about \$16,000.00 in a year?

18 THE WITNESS: I would have to check
19 that, Your Honour, but we would examine the closest
20 available relevant data which would come from Newfound-
21 land.

22 THE CHAIRMAN: The closest in the area?

23 THE WITNESS: Yes. We would probably
24 examine all data in Newfoundland if we were able to
25 obtain it.

26 THE CHAIRMAN: I am just wondering
27 whether you took into consideration the only pilot
28 in Stephenville, that he is not under the jurisdiction
29 of the Pilotage Authority. It is the Stephenville
30 pilot for the American base there.



1 THE WITNESS: We would look to the
2 earnings of the self-employed pilots who were designated
3 under the Canada Shipping Act.

4 THE CHAIRMAN: Not the others?

5 THE WITNESS: No.

6 MR. JACQUES: Q. One last question --
7 you said that with respect to pilots you just found
8 out if the yardstick was a pilot and if what you had
9 to measure was also called a pilot and then you ad-
10 justed the rate regardless of what they do, regardless
11 of the meaning which might be ascribed to the word
12 "pilot". Is it a general practice? You never in any
13 other case deal with working conditions?

14 A. No, we do not deal with the
15 working conditions such as the area in which they
16 work, the hazards under which they might work, the
17 amount of strength required and the amount of skill
18 required. What we do is base our recommendations on
19 the prevailing rate in private industry for the
20 performance of the same duties.

21 Q. How can you come to the
22 conclusion that it is the performance of the same
23 duties?

24 THE CHAIRMAN: This is turning into a
25 vicious circle here; we are getting nowhere.

26 -----

27 CROSS-EXAMINATION BY MR. LALONDE:

28 Q. There is only one point, Mr.
29 Johnstone. You mentioned, I think, that you took into
30 account, however, the number of hours worked if there



1 was a substantial difference and when it was based
2 on an hourly basis; is that correct? That is what you
3 stated before?

4 A. I used the illustration of
5 seamen.

6 Q. Yes. In that case you would
7 take into account the number of hours worked?

8 A. The regular hours worked under
9 the private system was seven days a week and the
10 government employees worked five days a week.

11 -----

12 CROSS-EXAMINATION BY MR. BRISSET:

13 Q. Mr. Johnstone, would it not be
14 fair to say that when you fixed the prevailing rate
15 for the pilots in District #2 you were relying on the
16 wages of the pilots in District #1? You assumed that
17 the jobs in the broad sense of the word were comparable?

18 A. Yes, that is right.

19 Q. That is the basis?

20 A. Substantially the same, that is.

21 Q. To illustrate the workload if
22 we speak of hours on assignment, I would like you to
23 refer to Exhibit 1301. If you look at the records of
24 the pilots for / Saint John Harbour for 1961 you will see
25 that their gross earnings were \$16,361.16 and their
26 hours on assignment were 396.8 hours for the year,
27 which gives a rate per hour of roughly \$40.00 an hour.
28 Now if you look for the same year at the figures for
29 Montreal Harbour pilots you will see that they earn
30 \$12,627.73 and that their total hours on assignment were



1 767.4 hours. You have seen that?

2 A. Yes.

3 Q. If you had been called upon
4 to set a prevailing rate for the Montreal Harbour
5 pilots and had used the / Saint John Harbour pilots figures,
6 surely you would not have recommended a yearly rate
7 of \$24,000.00 for the Montreal Harbour pilots because
8 their hours on assignment were double those of the
9 Saint
/ John pilots; am I right?

10 A. Well, we have not prepared a
11 recommendation on hours at all and you are really
12 posing a hypothetical question on what we might do.

13 Q. Yes.

14 A. I do not think I should answer
15 a hypothetical question like that.

16 Q. You cannot even confirm to me
17 that you would not have set a rate for the Montreal
18 Harbour pilots that would have been double that of
19 the / Saint John pilots by way of an annual wage simply
20 because they were showing hours on assignment double
21 those of the / Saint John pilots; that is my question.

22 A. Well, it is still a hypothetical
23 question. We have not gone into the problem of setting
24 rates for pilots on hours worked. If we are requested
25 to do so we will try to, but we might come up with some
26 of the curious anomalies of fantastic rates that you
27 are quoting right now. But that is something that
28 has not been done by us and I do not care to say what
29 we would do about it.

30 Q. So you are not prepared to say



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1 that you would have proceeded on the same basis as
2 you have proceeded to establish the rate in District 2?

3 A. Well, we have proceeded on
4 that basis.

5 Q. On the basis that the jobs
6 were similar?

7 A. We have proceeded on the basis
8 of the earnings and the amount of time in which the
9 earnings are made -- that is, the months of the year,
10 whether it is six months or eight months or eight and
11 a half months or nine months, so that we have used the
12 time factor but not the time factor of hours.

13 THE SECRETARY: Mr. Johnstone, just to
14 clarify the record and to fully understand your
15 evidence, with the permission of the Commission, the
16 fixing of rates under the prevailing rate employees
17 regulations is a responsibility of the Department of
18 Transport; is it not?

19 THE WITNESS: The fixing of rates?

20 THE SECRETARY: Or the recommendation
21 to the Treasury Board with respect to rates.

22 THE WITNESS: The fixing of rates is
23 the responsibility of Treasury Board.

24 THE SECRETARY: The recommendations?

25 THE WITNESS: The recommendations come
26 from the Department of Labour.

27 THE SECRETARY: And these recommendations
28 are developed in your Branch?

29 THE WITNESS: Yes.

30 THE SECRETARY: Your Branch is called



1 Labour ---

2 THE WITNESS: It is now called the
3 Labour Standards Branch.

4 THE SECRETARY: The recommendations
5 developed in your Branch with respect to prevailing
6 rate employees I take it are a major responsibility of
7 your Branch compared to other duties that your Branch
8 may be doing?

9 THE WITNESS: No. I would say at the
10 present time it is about half our responsibility. We
11 have the responsibility of regulating and enforcing
12 fair wages and fair hours -- maximum hours of work
13 on all federal government contracts for construction
14 and for manufacture and supply of equipment. Now we
15 are also dealing with fair wages on contracts for
16 services which the government ---

17 THE SECRETARY: In these cases, I take
18 it, you make a thorough study of the working
19 conditions in these trades?

20 THE WITNESS: We make a study primarily
21 of wage rates paid by private industry to the various
22 types of workmen employed on government contracts and
23 to the various classes of workmen employed by govern-
24 ment Departments and agencies as prevailing rate
25 employees. The policy of the government has been for
26 over 60 years to relate the minimum rates on government
27 contracts and to relate the rates paid to prevailing
28 rate employees of the government to the private industry
29 rates in the area for similar work.

30 THE SECRETARY: But in these cases your



1 studies on the rates to be recommended related to the
2 working conditions, the type of work?

3 THE WITNESS: Well, to the duties
4 performed but not to the conditions under which the ---

5 THE CHAIRMAN: You are in the same
6 vicious circle as we were before.

7 THE SECRETARY: Do you make a distinction
8 between duties and working conditions?

9 THE WITNESS: Yes, because in the govern-
10 ment service there is a committee, and inter-departmental
11 committee set up by the Treasury Board to deal with the
12 working conditions of prevailing rate employees such
13 as the hours of work, sick leave, special leave and
14 all those conditions that are set forth in the
15 regulations. That committee recommends to Treasury
16 Board what should be done as a matter of government
17 policy and vacations and holidays and fringe benefits
18 and supervisory differentials.

19 THE SECRETARY: But fringe benefits
20 is not a working condition; let us eliminate those.

21 THE WITNESS: You say "working conditions".
22 I am thinking of fringe benefits as working conditions.

23 THE CHAIRMAN: Again I think you are
24 talking over again what we have been trying for almost
25 a day now to find.

26 THE SECRETARY: I am quite happy, My
27 Lord, with that. It was just to understand the
28 evidence.

29 THE WITNESS: Before I leave, Your
30 Honour, in my evidence yesterday I indicated we had not



1 made a recommendation in the Sault Ste. Marie District
2 prior to 1964. That was incorrect and it is corrected
3 in this statement. I may explain, Your Honour, that
4 we have made a change in our files and recently we
5 made a change in our place of work and inadvertently
6 this information was not included.

7 THE CHAIRMAN: There were prevailing
8 rates before so therefore it had to go to your
9 Department?

10 THE WITNESS: I just missed one file
11 in our set-up of the statement.

12 THE CHAIRMAN: Thank you. Are there
13 any further questions of Mr. Johnstone?

14 Thank you very much, Mr.
15 Johnstone.

16 ---Witness withdrew.

17 THE CHAIRMAN: Before entering into a
18 new subject we are going to take a ten minute
19 adjournment right now.

20 ---SHORT RECESS.
21
22
23
24
25
26
27
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29
30



1 ---UPON RESUMING

2 FREDERICK CHARLES OPPEN, Sworn

3 DIRECT EXAMINATION BY MR. JACQUES:

4 Q. Would you state your full
5 name please for the record?

6 A. Frederick Charles Oppen.

7 Q. You are on the staff of the
8 National Harbours Board and you are stationed at
9 Montreal?

10 A. Correct.

11 Q. You may sit if you wish, sir.

12 A. Thank you.

13 Q. The Commission has directed a
14 series of 12 questions to the National Harbours Board.
15 I take it that you have been delegated to answer
16 those questions?

17 A. Correct.

18 Q. With respect to answering the
19 Commission in general, would you before answering
20 the questions give me any statement as to the views of
21 your Board?

22 A. With regard to what?

23 Q. Pilotage matters in general.

24 A. Questions number 11 and 12 of the
25 12 questions you gave to us perhaps opens that subject
26 up. This is what you had in mind?

27 Q. Yes.

28 A. Your Lordship, regarding number
29 11, it is not the Board's intention to make any request
30 that it take over the administration of pilotage. If the



1 Board were asked to do it or ordered to do it it would
2 accept that responsibility and carry it out to the
3 best of their ability in the best interests of all
4 parties.

5 THE CHAIRMAN: Yes, but do you see any
6 advantage in taking over the administration of the
7 harbour for unity of command and so on? These services
8 which come under your authority in places where you have
9 full command of all the regular activities in the
10 harbour?

11 THE WITNESS: Our position on that, sir,
12 is that we feel that we have a great responsibility
13 to provide within the port limits basically efficient
14 service at moderate cost. Now, with this end in view
15 we feel it is necessary we have better control than
16 we do now but that doesn't mean we have to take over
17 the administration of all services. For instance, the
18 Department of Transport looks after dredging and things
19 like that, and there are, of course, the pilots.

20 We do not feel we have to take
21 over these services. We do, however, feel strongly
22 that we should have greater control. I am now talking
23 about pilots. With this end in view we do have some
24 ideas which perhaps I might be prepared to --

25 COMMISSIONER SMITH: Captain, before
26 you pass on from that point. In Montreal some evidence
27 was given, I think by the Harbour Master, that there
28 was an element of dual control in the harbour. That
29 was one of his reasons for mentioning that it might be
30 advantageous for the National Harbours Board to take



1 over the pilotage there.

2 THE WITNESS: It is correct that it is
3 dual control at present but I think one might say dual
4 control in other things. I don't think we want to
5 take over -- the Board to take over the whole of the
6 pilotage. There are lots of angles about which we do
7 not know very much. So long as the procedure of
8 controlled responsibility could be set up that
9 provided the factors of safety and efficiency that
10 is required by the port, we are clearly flexible as
11 to how it is done.

12 As a commencement we would
13 like to sit on a number of Boards and perhaps in a
14 little more detail we feel that in the case of every
15 accident, no matter how small, a Board of Inquiry
16 should be set up.

17 MR. JACQUES: Q. It should not be
18 discretionary, it should be mandatory?

19 A. It should be mandatory, correct.
20 We would like to have representation on the Board
21 of Inquiry to the extent of 50% if possible, but in
22 any case not less than 33-1/3% or one-third of the
23 Board that makes in inquiry.

24 THE CHAIRMAN: This inquiry would not
25 be only in cases where there is a pilot aboard but in
26 all cases?

27 THE WITNESS: In all cases of accidents.
28 We would like that Board to have authority to recommend
29 penalties. We would like to have the right to call
30 for a Board of Inquiry in the case of infractions.



1 Now, in connection with the
2 responsibility of pilots -- they are, of course, the
3 very important advisors to the Masters -- it is
4 essential that they know all harbour by-laws, the
5 Harbour Master's instructions. This is in addition to
6 their familiarity with the river conditions, conditions
7 that change. I am talking about Montreal now when
8 I say river.

9 And to ensure that we do have
10 the type of persons that could maintain a high safety
11 record, which is essential these days when intelligence
12 is such an important item where a ship and where
13 competition, particularly south of the Canadian border,
14 is so very great. We really have to prove our
15 efficiency.

16 We therefore would like to have
17 the same representation as I mentioned before on the
18 Examining Boards for applicants for pilotage and also
19 on Boards of Re-examination of Pilots.

20 MR. JACQUES: Q. What do you mean
21 "Boards of Re-examination"?

22 A. I am not aware whether in our
23 areas pilots are re-examined every year to make sure
24 they are up-to-date with conditions on the river, with
25 regulations, with instructions and so on, but we feel
26 that this is absolutely necessary not only from our
27 point of view but from the pilots' point of view that
28 all the instructions that have been issued, they are
29 familiar with.

30 We feel they should be examined



1 preferably once a year or maybe once every two years
2 but fairly frequently to make sure -- we do not
3 visualize a long written examination. We visualize
4 something quite short, maybe 30 minutes.

5 I believe now -- I think I am
6 right in this -- they have an eyesight examination each
7 year. This could probably be tied in with that and
8 would not take much of their time but it would ensure
9 that all the pilots were absolutely up-to-date on
10 everything that was important to the safe manoeuvring
11 of ships within the harbour area.

12 THE CHAIRMAN: This is the kind of
13 examination they have on railways. I think all the
14 employees have to take periodic examinations.

15 THE WITNESS: I am not familiar, sir,
16 with the railways. I do know that in many Harbour
17 Authorities throughout the world there is a form of
18 re-examination, a periodic re-examination. I think it
19 is a very good thing.

20 THE CHAIRMAN: None is provided in
21 Canada now?

22 THE WITNESS: I don't know. I am not
23 aware of any re-examination. I don't actually know.

24 MR. JACQUES: Q. Have you anything else
25 to add on this question?

26 A. No, we feel that at this stage
27 if this type of administration were to be put into
28 force that we could keep the control that is necessary
29 within the river, which is a very busy river with lots
30 of traffic on it. Control must be tight. Before the



1 Seaway was opened up it was theoretically a straight
2 channel, not much cross traffic, but shipping is
3 increasing. We have to change our policies very
4 considerably if we are going to maintain a good
5 record which is so necessary.

6 Q. Change your policies with
7 respect to safety?

8 A. With respect to safety. We
9 have to improve them, modernize them -- take over --
10 must have control of the actual shipping.

11 Q. Of the people who actually
12 bring the ships about?

13 A. Yes.

14 Q. Whether Masters or pilots?

15 A. Correct.

16 -----

17 CROSS-EXAMINATION BY MR. LALONDE:

18 Q. I notice in your last statement
19 that you referred to the Seaway in particular, sir.
20 I thought you had in mind mainly Montreal Harbour.
21 If I understood you correctly you said the recommendations
22 you make would apply to any National Harbours Board?

23 A. Yes, sir, it does, to any
24 Pilotage District that directly affects one of the
25 National Harbours Board controlled ports.

26 Q. Obviously you have seen ports
27 where ships are not required to take pilots. They may
28 do so usually but some ships come in without using
29 pilots. That is correct, is it not?

30 A. I believe this to be. I believe



1 some come into Montreal without pilots.

2 Q. This would apply also and even
3 more probably to some of your other harbours in Canada?
4 You have Vancouver Harbour, for instance?

5 A. Vancouver Harbour is administered
6 by ourselves.

7 Q. Therefore also that would
8 apply?

9 A. I understand there are many
10 ships going there that do not carry pilots.

11 Q. Now, did you examine the
12 necessity of your Board to have yearly examinations,
13 for instance, of Masters plying into the harbour
14 without pilots on board?

15 A. We have not gone as far as that.
16 I think it is a point that merits very serious
17 consideration, though.

18 Q. But you have not considered
19 this point up to now?

20 A. Frankly, I didn't think of it.

21 Q. By the way, could you tell us how
22 these recommendations were arrived at?

23 A. Well, there was a general
24 discussion of Board members and representatives from
25 some ports into our problem and as a result of the
26 discussion these ideas came forth as appearing to be the
27 best recommendations that we could make at this time.

28 We feel that if these are put
29 in perhaps this will solve the problem and it does not
30 attempt to change too much existing order. We are not



1 trying to change anything just for the fun of changing.
2 All we are trying to do is improve or at least maintain
3 -- but much better to improve -- the conditions.

4 Q. Now, is it correct that this
5 was a formal Board meeting?

6 A. A formal Board meeting, yes.

7 Q. You also invited a few
8 representatives from some ports, you said?

9 A. The Board invited some port
10 representatives.

11 Q. Can you tell us which ports were
12 represented?

13 A. Montreal and Quebec.

14 Q. These were the only two ports?

15 A. Correct. I do not know, Mr.
16 Chairman, what discussions they had had with other
17 Port Managers outside of this particular meeting. I
18 know there is correspondence with at least one other
19 port but I think it is very probable they did discuss
20 it with Vancouver, Halifax, St. John and other Port
21 Managers.

22 THE CHAIRMAN: In any event the
23 recommendations are in a very general form, that you
24 want to have more participation in what is going on in
25 the harbour and you do not want to take the actual
26 responsibility for all the services. That is what it
27 amounts to?

28 THE WITNESS: Yes. We would take it over
29 if it was given to us. We are not asking to change the
30 world to reach a solution.



1 THE CHAIRMAN: You would like to be on
2 these Board in order to be kept posted and to have a
3 certain amount of control and knowledge of what is
4 going on?

5 THE WITNESS: Yes, sir. That is correct.
6 From the information obtained on the Board we could
7 adjust our procedures and keep them up-to-date. One
8 obtains a lot of information on a Board. By-laws may
9 require change and the St. Lawrence River navigation and
10 all kinds of things can come up from this and I don't
11 think that we envisage this as being a very narrow
12 thing. We feel this will help us to provide the most
13 reasonable conditions to have a ship moved and the best
14 possible safety.

15 THE CHAIRMAN: Yes. I see. In these
16 meetings you would have all the other people interested
17 in port activities. Therefore these various Boards
18 could make these Boards as an informal Port Council,
19 if I could say that?

20 THE WITNESS: Well, no --

21 THE CHAIRMAN: An occasion for a meeting
22 anyway?

23 THE WITNESS: Yes, an occasion for
24 meetings. I don't think that I would like to call it
25 an informal Port Council.

26 MR. LALONDE: Q. I understand the
27 words "Port Council" in Montreal is not very popular
28 in the harbour?

29 THE CHAIRMAN: I was not referring to
30



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1 the existing organization or something like that but
2 I think the whole concept is if you meet with these
3 other people whenever there is a casualty or whenever
4 there is an infraction or whenever there is an
5 examination of a pilot, why then you are close to them
6 and with everything that goes on, especially when you
7 are concerned with safety so this is a meeting of all
8 the people concerned with port activities and therefore
9 it is a kind of super-organization, as far as the
10 port is concerned although it is not set up as a
11 permanent thing or as a permanent Council.



1
2 CAPTAIN OPPEN: Yes, that is quite
3 correct. We find -- and I am sure everybody does --
4 that when you do have an opportunity to talk to
5 somebody about a line of business you can always pick
6 up information. Sometimes it is very surprising; you
7 are amazed at what you hear. Quite apart from the
8 control, this is a source of information given seriously
9 which can be very beneficial to everybody, not just to
10 the port but to all that is backing us up, even the
country.

11 MR. BRISSET: Captain, from what
12 you have stated I understand that the Board would like
13 to have a greater participation in pilotage matters
14 than it has at the present time. Would this partici-
15 pation as you contemplate it include participation in
16 the negotiations for the pilotage tariffs that would
be applicable within the limits of the particular port?

17 CAPTAIN OPPEN: No, we are not
18 recommending that, but I would like to repeat that if
19 we were instructed to take this over we would not
20 refuse. We are not asking for it; we are not recom-
mending it.

21 MR. BRISSET: Would the Board like
22 to have a word to say in the setting up of the tariffs
23 taking into account that this is of course a port
24 charge which would affect the economy of the port?

25 CAPTAIN OPPEN: We are very
26 interested in port charges, naturally. Again I repeat
27 that we are not asking for major changes, only changes
28 that are necessary.
29
30



1
2 In our opinion, the most important
3 thing is control; that is our first responsibility.
4 We would prefer to leave it to the Commission to
5 decide whether we should be involved further.

6 MR. BRISSET: I am not suggesting,
7 Captain, that the pilotage tariffs within any particular
8 harbour be set up by the National Harbours Board itself.
9 All I was suggesting was that possibly the Board might
10 be given the opportunity of making its views known to
11 those who set up the tariffs, because the port, I
12 would think, has an interest in the charges that would
be made eventually.

13 CAPTAIN OPPEN: We do have an
14 interest. If we were asked by either or both parties,
15 or however many parties there are, to give an opinion
16 I think we would exert our best efforts to work out
17 a suggested solution. We are prepared to take on work
18 of this kind. We have to think of personnel. It may
19 need more personnel, which we appreciate, but we are
20 prepared to take this on. We are not asking for it
21 and we are not recommending it, however. I think it
22 is rather important. We are not running away from it.
23 We would gladly take it on if we are asked to do it,
24 but we feel that from our point of view -- which again
25 is essentially safety, discipline and cost of operation --
26 if we have quite considerable authority on boards
27 examining pilots, boards of inquiry, etc., this should
28 be sufficient. We may find it is not enough later on,
29 but at this stage we feel that perhaps it is as far as
30 it might be necessary to go from our point of view.



1
2 THE CHAIRMAN: This is not the
3 gist of the question of Mr. Brisset.

4 We have heard evidence to the effect
5 that some ports are by-passed by shipping because they
6 are expensive ports on account of port charges, and
7 the pilot charges are part of the port charges which
8 could make a port expensive. If the port is expensive
9 then the future of the port is compromised. So in
10 that way the National Harbours Board, if it is in
11 charge of the port, would be an interested party.

12 CAPTAIN OPPEN: Yes, sir, we
13 would.

14 THE CHAIRMAN: The Board would
15 be an interested party in the fixing of a tariff, and
16 this is why Mr. Brisset asks you whether you should not
17 be in court to put up your argument against an increase
18 in tariffs and so on.

19 CAPTAIN OPPEN: Yes, sir, we are
20 very interested. As you correctly stated, this can
21 have a considerable bearing on the movement of freight,
22 so we would be interested.

23 THE CHAIRMAN: So even if you are
24 not asked by any of the parties involved, you are a
25 party yourself, and even if you think you are affected
26 by a charge then you could on your own move to make
27 an objection to an increase in tariff and there should
28 be machinery?

29 CAPTAIN OPPEN: That I think would
30 be most advantageous.



1
2 MR. BRISSET: That was the purport
3 of my question. I am sorry I did not make it clear.

4 CAPTAIN OPPEN: I am trying to
5 evade -- and I know you will appreciate this, sir --
6 taking on negotiations. At this time we do not think
7 it is necessary for the Board to be a negotiating party
8 with anyone else on pilotage tariffs.

9 THE CHAIRMAN: Because they are
10 reasonable, I suppose!

11 CAPTAIN OPPEN: We have never been
12 in this; we do not know too much about it. We will
13 take the work on if we are asked to do so.

14 MR. LALONDE: Do you think the
15 same principle and the same rules should apply to other
16 port charges? For instance, longshoremen's charges can
17 be very high in some places.

18 CAPTAIN OPPEN: That is correct.

19 MR. LALONDE: Then you should have
20 a voice in establishing rates; is that correct? Would
21 you not reach the same conclusion?

22 CAPTAIN OPPEN: I think you can
23 take the same conclusion as with regard to pilots --
24 that we are interested in these rates and if we are
25 given an opportunity to state a case that would be
26 advantageous. I am not prepared to say we would use it.

27 MR. LALONDE: Obviously shipping
28 agents can also be a factor in the costs. Would you
29 consider that you should have a voice in these matters
30 also?

CAPTAIN OPPEN: I think this is
getting rather far away from a port administration's



1
2 responsibility. We are interested in all of them. If
3 we were to get far into it we would soon become an
4 autocracy telling everyone what to do -- the shipping
5 companies, the pilots and so on -- and no one else
6 would like that. We must not be a big lion eating
7 everything up.

8 MR. LANGLOIS: To go back to the
9 board of inquiry, you mentioned that every time an
10 incident occurred it would be advantageous to have
11 a board of inquiry. Where would these incidents be
12 localized? In the limits of the National Harbours
13 Board ports?

14 CAPTAIN OPPEN: May I say that I
15 think I said accident.

16 MR. LANGLOIS: Yes, accident.

17 CAPTAIN OPPEN: With an option
18 on infractions. Yes, probably the best place would
19 be in the ports.

20 MR. LANGLOIS: Would you be
21 concerned with accidents taking place anywhere in the
22 district or only accidents taking place in the harbour
23 itself?

24 CAPTAIN OPPEN: I think we only
25 have administrative rights in our own harbours. We
26 are interested in all of them.

27 MR. LANGLOIS: Concerning infractions,
28 which infractions were you talking about? Were you
29 talking about infractions of National Harbours Board
30 regulations or pilots administrative regulations?

CAPTAIN OPPEN: No, pilots
administrative regulations are not our concern but



1
2 the St. Lawrence River regulations, the National
3 Harbours Board by-laws, notices to mariners, notices
4 to shipping, harbour instructions and anything of that
5 nature.

6 MR. LANGLOIS: What control do you
7 wish to have over things going on in your harbour? What
8 control do you have over aids to navigation such as
9 buoys, range lights, ship channels and so on?

10 CAPTAIN OPPEN: The Department of
11 Transport administers that. We have very close liaison
12 with the ship channel branch; we are on the telephone
13 at least twice a day. We know what they plan; we know
14 the scheduling and everything else. We have to work
15 very closely with them. Although we have no administra-
16 tive power at all, we have such close liaison that
17 problems do not arise.

18 MR. LANGLOIS: Are you kept aware
19 of all the changes that are made in the channel in
20 access to Montreal harbour?

21 CAPTAIN OPPEN: Yes, and the
22 prospective changes and plans for future years -- we
23 are on all these committees.

24 MR. LANGLOIS: Are you also aware
25 of currents?

26 CAPTAIN OPPEN: We call for current
27 testing. If we have complaints from shipping companies
28 or pilots we request that the current meters be set out.
29 This is done at our request.

30 MR. LANGLOIS: Are you aware that
no such liaison exists between the Department of Trans-
port and the pilots?



Oppen
(Langlois)
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2 CAPTAIN OPPEN: I have no idea;
3 that is not within my sphere.

4 MR. LANGLOIS: Would you be
5 interested in the institution of such liaison as far
6 as safety is concerned?

7 CAPTAIN OPPEN: I do not think I
8 know enough about that field. You are talking about
9 outside the port area?

10 MR. LANGLOIS: No, inside the port.
11 There is a lot of major construction going on in the
12 harbour of Montreal. Do you feel it would be important
13 for the pilots to be informed of this?

14 CAPTAIN OPPEN: The pilots are
15 informed by notices to shipping issued by the harbour
16 masters' office or the Department of Transport.

17 MR. JACQUES: With respect to that,
18 officially it does not appear on any chart or any
19 notice to mariners that there are islands abuilding
20 in the harbour of Montreal.

21 CAPTAIN OPPEN: I think, sir,
22 those islands are outside the navigable channels and
23 we do not issue notices on work outside the navigable
24 channels.

25 MR. JACQUES: I see. That would
26 be the reason.

27 CAPTAIN OPPEN: Yes.

28 THE CHAIRMAN: With regard to
29 safety, very strict control over traffic has to be
30 maintained. If you were to come to the conclusion one
day that pilotage in the harbour should be compulsory,



1
2 in order to have safe conditions you would have to
3 have experts to run those ships.

4 CAPTAIN OPPEN: That could happen.

5 THE CHAIRMAN: This is one thing
6 you could contemplate and you could recommend?

7 CAPTAIN OPPEN: Yes.

8 MR. JACQUES: May I take up the
9 questions and refer to question No. 1?

10 I would like to file this document
11 as Exhibit 1369. It is in the form of a letter, is
12 it not, addressed to Montreal Boatman Limited, dated
13 January 23, 1964, by yourself, the Assistant Port
14 Manager, Operations?

15 CAPTAIN OPPEN: That is correct.

16 MR. JACQUES: This contains the
17 conditions under which the Montreal Boatman Limited
18 operate in the harbour?

19 CAPTAIN OPPEN: Yes.

20 ---EXHIBIT NO. 1369 - Letter addressed to Montreal
21 Boatman Limited by the Assistant
22 Port Manager, Operations, on
23 January 23, 1964

24 MR. JACQUES: I see it is dated
25 January, 1964. Can you tell me if there was any prior
26 agreement with that company?

27 CAPTAIN OPPEN: Yes, there has been.

28 MR. JACQUES: It has been operating
29 for seven years.

30 CAPTAIN OPPEN: There has been
for many years.



1
2 MR. JACQUES: Would the previous
3 agreements be substantially the same as the present
4 one?

5 CAPTAIN OPPEN: Yes.

6 MR. JACQUES: Do you consider
7 this agreement constitutes a franchise? Do you
8 consider this grants permission to Montreal Boatman
9 Limited excluding the possibility of another company
operating a boat service for similar purposes?

10 CAPTAIN OPPEN: No, I do not think
11 it gives them a complete autonomy within the harbour
12 for operating a service.

13 MR. JACQUES: There could be
14 another company?

15 CAPTAIN OPPEN: There could be
16 another company.

17 MR. JACQUES: As far as you know now
18 there would be no objection on the part of the National
Harbours Board to another company operating?

19 CAPTAIN OPPEN: There would be
20 no objection.

21 THE CHAIRMAN: As is the case in
Quebec.

22 MR. JACQUES: Yes, sir.

23 CAPTAIN OPPEN: I might say, sir,
24 that we would not let somebody else come in if it was
25 going to harm the service, if there was not enough
26 money for two services, which would mean there would
27 be two poor services instead of one good one. We think
28 of these things, but in principle we would not object
29 to someone else coming in.
30



1
2 THE CHAIRMAN: Would it be within
3 your powers to not grant a further request?

4 CAPTAIN OPPEN: We do not have to
5 grant requests.

6 MR. JACQUES: That answers question
7 No. 2.

8 With regard to question No. 3, do you
9 grant any permit to operate pilot boats?

10 CAPTAIN OPPEN: We do not have
11 pilot boats as such; the pilots use service boats.
12 These are required to come under the inspection regu-
13 lations of the Department of Transport; that is written
14 into this lease.

15 MR. JACQUES: And you have no
16 further requirement?

17 CAPTAIN OPPEN: No.

18 MR. JACQUES: Question No. 4:
19 "With reference to vessels leaving their berth
20 at Montreal harbour without prior permission
21 from Harbour Master, three instances were quoted
22 for 1963. Were any disciplinary measures taken
23 either against the masters or pilots of these
24 vessels?"

25 CAPTAIN OPPEN: No disciplinary
26 action was taken.

27 MR. JACQUES: Do you know why?

28 CAPTAIN OPPEN: I would like to
29 quote from this document which has been prepared for
30 the Commission. It says:



Oppen
(Jacques)

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2 "Case closed without disciplinary action or
3 prosecution. Investigation inconclusive."

4 That is the case of the Mormac wave on May 17. In
5 the case of the Jaladharati on June 17:

6 "Case closed without disciplinary action or
7 prosecution. Contradictory evidence."

8 The last one deals with the Hurricane
9 on June 26:

10 "Case closed without disciplinary action or
11 prosecution. Investigation inconclusive."

12 MR. JACQUES: I will ask the
13 witness to file the document from which he has just
14 read.

15 EXHIBIT NO. 1370 - Particulars of infraction on
16 the part of three ships leaving
17 berth without permission in 1963

18 MR. BRISSET: Captain, in Exhibit
19 1334, which is before this Commission and which is a
20 list of infractions of National Harbours Board by-laws,
21 there are three other cases mentioned in 1963, one on
22 July 19 in reference to the "Suzanne Reith", the pilot
23 being J. A. Yeaman -- "Sailing without permission."
24 Was any action taken there?

25 CAPTAIN OPPEN: No, no action was
26 taken.

27 MR. BRISSET: On July 3 I see the
28 case of C.C.G.S. Raven, pilot E. Davidson, "Sailing
29 without permission." Was any action taken?

30 CAPTAIN OPPEN: This case is still
pending.



1
2 MR. BRISSET: September 22 the
3 "Sunmar", pilot L. E. Able, "Sailing without permission".
4 Was any action taken?

5 CAPTAIN OPPEN: No disciplinary
6 action was taken and there was no prosecution.

7 MR. BRISSET: December 3, 1963:
8 "Manchester Merchant", pilot J. P. Giroux, "Delayed
9 departure. Sailed without renewing permission to sail,
10 resulting in collision with M/V Lionel".

11 CAPTAIN OPPEN: The master was
12 fined \$100 in the Montreal municipal court.

13 MR. BRISSET: Am I right in my
14 understanding that after this collision instructions
15 were issued by the National Harbours Board forbidding
16 ships coming out of the Seaway entrance and intending
17 to proceed upriver to swing around the Seaway buoy and
18 instructing them to proceed downriver in the
19 vicinity of Vickers Basin to swing before proceeding
20 upriver?

21 CAPTAIN OPPEN: That is correct.
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1 Q. Has there been since any
2 infraction of these directives or instructions
3 issued by the Board?

4 A. Yes, sir, there has been a
5 fair number. We have listed them up until the end
6 of August. We had to have a final date. I have a
7 list here.

8 Q. I am speaking of that particular
9 directive not to swing around the Seaway buoy.

10 A. Yes. I know of one; I am
11 not sure if it is on this list. There was a misunder-
12 standing, I believe. May I just look through and
13 see if I have it here?

14 Yes, I have one here. The
15 M. V. SUNRISE on June 2nd turned off Laurier pier
16 against instructions. Oh, there is one other; on
17 August 3rd the MARCO U. MARTINOLI turned off Shed 51
18 and dropped anchor in ship channel. It does not define
19 that it came out of the Seaway. I could not be sure
20 of that, but from the wording here I think possibly
21 they did. Generally speaking ships are obeying this
22 new directive.

23 -----
24 DIRECT EXAMINATION BY MR. JACQUES:

25 Q. With reference to question
26 number 5, with respect to breaches of traffic control
27 regulations, I believe you have prepared a statement
28 of these breaches?

29 A. Yes, that is correct.

30 Q. You might attach this new



1 Exhibit to Exhibit 1334, which contains similar
2 information but not quite as complete, instead of
3 filing it as the next Exhibit?

4 THE CHAIRMAN: All right.

5 ---ADDITION TO EXHIBIT 1334: List of breaches of
6 traffic control regulations.

7 MR. LALONDE: Is there a copy for counsel
8 for the pilots?

9 ---Same handed to Mr. Lalonde.

10
11 CROSS-EXAMINATION BY MR. BRISSET:

12 Q. Captain, in the case of the
13 Exhibit which you have just filed giving a list of
14 breaches of traffic control regulations and the
15 conclusions reached, I note that in a number of cases
16 the case was closed without disciplinary action or
17 prosecution and then the explanation is given that
18 either the investigation revealed that the manoeuvre
19 was justified or evidence was not available to
20 proceed with disciplinary action or prosecution. Would
21 you feel that if you participated as proposed in
22 your recommendations in the Board of Inquiry into
23 infractions and so forth a more satisfactory conclusion
24 could have possibly been reached in cases where, of
25 course, no conclusion was reached and the case therefore
26 was closed?

27 A. Yes. We are not very happy about
28 the conclusion of these cases. We feel that it should
29 be possible in most cases to decide did they go without
30 permission; did they not go without permission; was



1 the action justified or not -- rather than leaving
2 it (may I use the expression) up in the air. We do
3 not think it is fair to all parties on that and it
4 is not satisfactory to us. So we do feel it would
5 be advantageous that way.

6 THE CHAIRMAN: So that is why you are
7 recommending that the Board of Inquiry be held in those
8 cases?

9 THE WITNESS: That has a large bearing
10 on it, sir.

11 -----
12 DIRECT EXAMINATION BY MR. JACQUES:

13 Q. Question number 6 refers to
14 underkeel clearance. Would you view favourably the
15 taking over of that duty which is now performed by
16 the Port Warden?

17 A. The Board, sir, intends to
18 continue to cooperate with the Port Warden and it has
19 no recommendations or comments to make at this time.

20 -----
21 CROSS-EXAMINATION BY MR. LALONDE:

22 Q. If the Commission were to
23 recommend that you were to take it over would you
24 gladly accept?

25 A. May I say, sir, that we would
26 not refuse it. Excuse me; I am very sorry; I misled
27 you on that. I am only talking about underwater
28 clearance, not any of the other Port Warden duties and
29 I think that Mr. Lalonde only referred to that.

30 Q. Yes -- Port Warden duties?



1 A. Not all of them.

2 Q. In that respect?

3 A. In that respect, yes.

4 -----

5 DIRECT EXAMINATION BY MR. JACQUES:

6 Q. Question number 7 -- did your
7 Board contribute in any way towards the construction
8 of a slip for the pilot boat in Three Rivers?

9 A. No, sir, it did not.

10 Q. Question number 8 -- any
11 franchise granted to Three River boatmen?

12 A. No, sir.

13 Q. Is there a similar list to that
14 already filed with respect to Montreal boatmen?

15 A. No, sir, there is not.

16 Q. Are you able to answer question
17 number 9 with respect to the installation of a radio-
18 telephone in Quebec Harbour?

19 A. Yes, sir. I have been in
20 correspondence with the Port Manager there. Perhaps I
21 might read his reply: "The Harbour Master must be
22 posted on all ships' movements and positions within the
23 harbour. Time is speed and safety is improved by
24 directing incoming traffic to pre-determined berths
25 or anchorages according to schedules and by warning
26 all traffic of ship movements, departures, arrivals,
27 locations or obstructions to shipping. For security
28 purposes traffic must also be kept informed of" -- he
29 means locations -- "of ships, adjusting compass,
30 calibrating, direction finding equipment", etc.



1 Q. And were the by-laws of the
2 Board amended to give effect to the suggestions contained
3 in the evidence as stated by Captain Allard?

4 A. It is with the understanding
5 that this referred particularly to a change of the
6 harbour limits. The harbour limits have been changed
7 and there is under consideration an extension of the
8 harbour further upriver. No decision on this matter
9 has been made yet.

10 Q. Captain Allard referred to
11 modifications of the regulations so that any ship
12 which enters or passes the limits of the harbour
13 must report to the Harbour Master in order to receive
14 instructions and be told he can proceed to enter at a
15 given place, to go up to a dock or just go through
16 the harbour.

17 A. I can say from my own knowledge
18 that our by-law is being changed. This will affect
19 all harbours. Perhaps I should be more correct in
20 saying that the changes are being considered to
21 include better harbour control, which would of course
22 include this particular phase.

23 Q. Thank you. Now, with respect
24 to 1369, would you take up this Exhibit, which is the
25 lease to Montreal boatmen?

26 A. Yes.

27 Q. There are two aspects of this
28 lease, one, the use of your facilities, the shore
29 facilities, and the other one is permission to do
30 something or perform a given work within the harbour on



1 the water?

2 A. Correct.

3 Q. Am I right in assuming that
4 with respect to the second aspect of the lease, the
5 permission to operate a ferry service and permission
6 to run lines are granted under the authority of the
7 Harbour Master to control movements of ships in the
8 harbour?

9 A. Yes, sir, that is correct.

10 Q. With respect to rates which
11 are charged I refer you to item 6. Would these be
12 the rates as specified in the by-laws of the Board?

13 A. No, sir. These, in fact, are
14 rents calculated on a rental rate and the areas
15 occupied. These, in fact, are rents.

16 Q. Well, I can understand rental
17 for a landing stage but I can with difficulty under-
18 stand a rental for a ferry service.

19 A. I am sorry; the ferry service
20 is a charge for a permit to operate.

21 Q. Would you recall under what
22 section of your by-law you charge for a permit, because
23 you said there was no permit required?

24 A. If I said that then I misled
25 you, because there is definitely a permit required, or
26 permission of some kind to do anything in the harbour.
27 The Harbour Master controls all water movements.

28 Q. Oh, yes, but there is a differ-
29 ence between granting a ship permission to move through
30 the harbour and requiring a ship to obtain a permit or



1 a licence, if you wish, in order to move.

2 THE CHAIRMAN: I think this is
3 interesting, but I am wondering whether it is within
4 our terms of reference.

5 MR. JACQUES: A pilot boat must have a
6 licence from the Department of Transport. In Quebec
7 it must have a licence from the Board of Transport
8 Commissioners and we now discover that it must also
9 have a permit from the National Harbours Board. I am
10 wondering if we cannot find a fourth one somewhere.

11 THE CHAIRMAN: If it is to be used as a
12 ferry service also, but not as a pilot boat.

13 MR. JACQUES: Your Lordship will note
14 I did not ask any question with respect to Sub-Section
15 5 of item 6 because it referred to scows, but I can
16 ask about the motor boats.

17 Q. There are five motor boats
18 at \$10.00 each -- \$50.00 for the total. Those would
19 be the boats which are used by the pilots, would they
20 not?

21 A. No, by the Montreal Boatmen
22 to convey anybody to and from ships. They may be
23 ship travellers, Department of Immigration, Customs,
24 Agriculture -- anything.

25 Q. And pilots?

26 A. And pilots. They are only a
27 private business.

28 -----

29 CROSS-EXAMINATION BY MR. LALONDE:

30 Q. I raise another point completely



1 outside this lease. I understand we have finished
2 with this question. My question is with relation to
3 the dispatching of vessels in Montreal Harbour. I
4 am instructed that the dispatchers instruct vessels
5 leaving Cap St. Michel to go into the Seaway to
6 proceed very slowly on various occasions and it may take
7 up to four hours to take a ship from Cap St. Michel
8 to the Seaway. Are you aware of that practice?

9 A. Yes, I am aware of this. The
10 procedure, sir, with the Seaway is that we do not
11 route any ships into the Seaway or out of the Seaway --
12 I am sorry; only into the Seaway -- without having
13 a request from the Seaway Authority. If the lock is
14 full and the so-called tie-up walls there, the berths
15 there are all occupied, they can take no more, so we
16 have the option of anchoring a ship if there is
17 available space in the harbour or holding the ship
18 down near Sorel or Lamoraie, or telling her to go
19 up very slowly. When our traffic officers give these
20 instructions they are trying to work in with the
21 schedule of the Seaway.

22 Q. I understand.

23 A. The Seaway endeavours to give
24 us some advance information on the congestion and we
25 try to work accordingly to get the ships through.

26 Q. You call them traffic controllers?

27 A. Actually most of the telephone
28 work is done by traffic officers.

29 Q. Are these traffic officers men
30 with maritime experience?



1 A. They all have Master Mariners'
2 certificates.

3 Q. The standard instruction they
4 give, I understand, is to proceed very slowly up?

5 A. No, sir, it is not standard.
6 It just applies when a certain condition happens.
7 We may have a full anchorage at Longue Pointe. The
8 only alternative is to turn round and go right back
9 to Lamoraie. It may lose the ship a turn; he may
10 lose hours.

11 Q. You understand, nevertheless,
12 that proceeding at very slow speeds in these waters
13 can be found dangerous by the Master and by the pilot
14 on board; is it not possible?

15 A. I would think, sir, that the
16 man would not permit the ship to be navigated at a
17 slower speed than it could be safely manoeuvred.

18 Q. Is it then left up to the
19 Master and the pilot on board to decide whether they
20 will anchor even if they receive instructions to
21 proceed very slowly? Have they got the option to
22 anchor?

23 A. No, sir.

24 Q. They have to abide by the
25 instructions of the dispatcher?

26 A. Yes; but they can always call
27 and say: "My minimum speed is 6 knots or 8 knots --
28 minimum safe speed -- and I cannot go as slow as you
29 want; what shall I do?" Then the dispatcher may say:
30 "I am sorry, you will have to turn and go downriver".



1 Or they may talk to the Seaway and see if they can
2 be helped out. We try and help the ships through.

3 Q. But all the time it is under
4 the control of your traffic officers?

5 A. Yes, sir.

6
7 DIRECT EXAMINATION BY MR. JACQUES:

8 Q. One last question: The Board
9 was supplied with several copies of a brief presented
10 by Computing Devices of Canada Limited. Have you had
11 an opportunity to read the brief?

12 A. I have only had a chance to
13 scan it. It arrived down in Montreal only two or
14 three days ago and I scanned through it and sent it
15 down to the Harbour Master, whose comments are very
16 important to me. I have a general idea of it. My
17 impression was that this brief justified a very close
18 study that could not be done in a matter of an hour or
19 two, so I got the general idea and we have started
20 a thorough study of it.

21 MR. JACQUES: Thank you.

22 THE CHAIRMAN: Are there any further
23 questions of Mr. Oppen?

24 THE SECRETARY: In regard to your last
25 evidence pertaining to the brief from Computing Devices
26 of Canada Limited, I am sure that the Commission will be
27 very interested in knowing the views of the National
28 Harbours Board with respect to this in due course,
29 should you wish to express any views. Presumably you
30 will and we will be very glad to have them.



1 THE WITNESS: Yes. Perhaps it is in
2 order, My Lord, to mention that we are ahead of some
3 of the briefs. We are not computing yet but, for
4 instance, we have a radio-telephone in. We have on
5 order recording equipment that will register all
6 conversations between ships and their harbour offices.
7 This is with a view to avoiding disputes when our
8 traffic officer says: "I told the ship not to sail,"
9 and the ship says: "We got permission to sail." Both
10 sides will now be protected. It is only human nature
11 that there are times when you perhaps stretch the
12 truth a little. We hope to eliminate this, so this
13 equipment is on order.

14 We are looking into and have
15 actually already had a survey down the river on
16 remote control radar equipment. I do not think this
17 will come too soon. It is very expensive and difficult
18 to set up because of the transits. You cannot get
19 clear views we have found. So we are going ahead
20 on some phases of this computer system, but I shall
21 be glad to ask the Board to make out a brief and send
22 it to you.

23 THE CHAIRMAN: Thank you. Any further
24 questions?

25 COMMISSIONER SMITH: Captain, I would
26 like to get a little closer to the Board's attitude
27 on pilot control in National Harbours Board's harbours
28 excepting Chicoutimi and Three Rivers. Now, it is
29 within the realm of possibility that Prince Rupert on
30 the West Coast and Sydney on the East Coast and



1 possibly other important harbours will someday come
2 under the control of the National Harbours Board and
3 we have today, I understand, from a recent announcement
4 in the House of Commons by the Minister of Transport,
5 the Harbour of St. John coming under the National
6 Harbours Board control so that you will have pretty
7 complete and comprehensive control of most of the
8 important harbours in the nation.

9 Now, the Harbour of Montreal
10 has today its harbour pilots. Quebec Harbour
11 has made representations to this Commission for harbour
12 pilots there. With regard to the river, both the
13 St. Lawrence and Saguenay, that would have to,
14 I presume, remain as it is at present under the Districts
15 that operate in these sections. What I am trying to
16 discover is: Could there not be by statutory enactment
17 imposed on the National Harbours Board the duty of
18 control of pilotage in all these harbours with the
19 advantage of unification and control and in the end
20 will result in greater protection of shipping and all
21 other elements that enter into the safety of
22 National Harbours Board's harbours. It may be, Captain,
23 I am getting a bit into high government policy or
24 high Board policy and you may not care to answer that
25 but I think it is important, to my way of thinking.
26 It is important for me to know just what the Board's
27 attitude would be to that kind of change and that
28 kind of system of control.

29 THE WITNESS: The Boards, sir, would be
30 prepared to accept the responsibility if it were imposed



1 on them.

2 COMMISSIONER SMITH: They would have to.

3 THE WITNESS: We would have to and we
4 are quite prepared to do it. We would have to work
5 hard to organize it but it could be done.

6 I would like to repeat we would
7 not ask for this for quite obvious reasons, but if
8 it came our way, we would certainly set up the
9 necessary either local or general administration or
10 whatever seemed advantageous.

11 COMMISSIONER SMITH: When you set up
12 that local administration, what would your opinion be
13 as to its efficacy?

14 THE WITNESS: I think, sir, I would
15 have to give a personal opinion on this. I cannot
16 quote the Board.

17 COMMISSIONER SMITH: Yes.

18 THE WITNESS: I feel there are a lot of
19 advantages in having local control. I feel that there
20 are other factors that have to be looked into. I am
21 given to understand that the Department of Transport,
22 you might say, subsidizes the administration of pilotage
23 services in the amount of a very large sum of money
24 which the Board has not got, so there are many details
25 like that that would have to be ironed out.

26 We could not do it out of our
27 own funds and pay subsidies which I understand are a
28 million dollars, or in that sort of order. This may
29 be wrong. This is hearsay. This is what I have heard.
30 We could not possibly do this out of our own funds.



1 COMMISSIONER SMITH: I realize that.
2 Obviating that important element, I know it is
3 important, there would have to be compensation, I
4 realize that. All these obstacles being overcome, what
5 is your opinion?

6 THE WITNESS: I think that there are
7 very definite advantages in having the control at the
8 port level. You could then coordinate all your
9 services together. I think the liaison would be
10 much better if, for instance, the pilots in Montreal
11 were part of the National Harbours Board organization;
12 I would suggest that the representatives of the group
13 would be called into a great many more meetings than
14 they are now called into and this would be to everybody's
15 benefit.

16 This is my personal opinion.
17 Now, the Harbour Master quite frequently discusses
18 problems with the Montreal Harbour pilots. I think the
19 reason why he does not see the river pilots so
20 frequently is probably because they are not so handy
21 to him, but liaison and cooperation is absolutely
22 essential for efficient harbour operation and this, I
23 believe, would help towards that end.

24 COMMISSIONER SMITH: Thank you.

25 THE CHAIRMAN: Are there any further
26 questions? Thank you very much, Mr. Oppen.

27 We will now adjourn until
28 2:30 this afternoon.

29 ---LUNCHEON ADJOURNMENT.
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ROBERT ARMSTRONG, sworn

MR. JACQUES: You are Mr. Robert Armstrong, Secretary Treasurer of the Canadian Marine National Employees' Association?

MR. ARMSTRONG: That is correct.

MR. JACQUES: Mr. Armstrong has been kind enough to get in touch with the Commission and apprise it of the activities of the Association in respect to employees of the pilotage authority. They cover all despatches in the St. Lawrence River area.

Is that correct, Mr. Armstrong?

MR. ARMSTRONG: I think you have perhaps put undue emphasis on the one local. In the local to which we draw attention on one of the pages we have said that they had been in touch with the Commission as they had a particular interest, but they are one local of about 40 and the members in the others would be officers on various coastguard vessels, crew members, and we also represent office employees at various centres.

MR. JACQUES: We are particularly interested with the employees of the pilotage authority. I should like to file as Exhibit 1371 the following documents. A letter dated September 25, 1964, addressed to the Chairman of the Royal Commission on Pilotage by Mr. Armstrong, Secretary Treasurer, together with a copy of the constitution of the association and information concerning membership and/or affiliation of this association with the Civil Service Federation of



Armstrong
(Jacques) 19828

1
2 Canada and other bodies; and a list of the directors
3 of the Association. Also there is a list of the branches
4 and, finally, financial estimates for the years 1965,
5 1966 and 1967.

6 EXHIBIT NO. 1371 - Letter addressed to the Chairman of
7 the Royal Commission on Pilotage
8 by Mr. Armstrong on September 25,
9 1964;

10 Copy of the Canadian Marine National
11 Employees' Association constitution;

12 Statement concerning membership
13 and/or association of the Canadian
14 Marine National Employees'
15 Association with the Civil Service
16 Federation of Canada and other
17 bodies;

18 List of directors of the Canadian
19 Marine National Employees'
20 Association;

21 List of branches of the Canadian
22 Marine National Employees'
23 Association;

24 Financial estimates for the Canadian
25 Marine National Employees'
26 Association for the year 1965, 1966
27 and 1967

28 MR. JACQUES: Have you any
29 comments to offer on the status and working conditions
30 of the employees of the pilotage authority, such as
despatchers and office help in the pilotage stations?

MR. ARMSTRONG: One could comment
at some length. I was directed yesterday by the
President of the particular branch mentioned, Mr.
Dubois, to bring to the attention of the Commission
the great insecurity felt by the people in such places
as St. Nicolas, St. Jean, Escoumains and one or two
other places. These people for some years have not



1
2 known from season to season whether the stations would
3 be open or not, and this has caused some concern. As
4 he said to me, it would be better if the stations were
5 either to be opened or closed rather than to have the
6 continual state of insecurity as has been the case in
7 the past several years. He said it was for six or
8 seven years. This is much before my time with the
9 Association so I do not know, but Mr. Dubois has been
10 directly involved in this and he asked me to make
this particular comment that precisely related to it.

11 MR. JACQUES: Would this worry have
12 been expressed to the proper authorities?

13 MR. ARMSTRONG: This perhaps leads
14 me into the second more general comment. The position
15 of civil servants vis a vis their employer does not
16 really allow for a normal, orderly, regularized way of
17 presenting grievances. There are grievances but they
18 are presented without any certainty that replies will
19 be received. This is not to say, however, that the
20 Association does not have good relationships with
21 departmental management because that would not be the
22 case. We have excellent relationships in some areas.
23 For public servants as a whole, however, there is not
24 a formal type of grievance procedure. Very often, I
25 think things are not presented because of the un-
certainty of them ever being resolved. This may well
have happened in this case.

26 MR. JACQUES: There is no
27 grievance procedure elaborated at the moment?

28 MR. ARMSTRONG: There is no
29 grievance procedure that ends in an independent
30



1
2 decision, shall we say. Nor is there a grievance
3 procedure with formal levels of procedure. That is
4 to say that at one stage you would have the grievance
5 presented orally and at another stage it would be
6 reduced to writing and passed from stage to stage
7 with a series of delays, say, of three weeks or five
8 weeks, until eventually a decision was given. We do
9 not have this now.

10 These despatchers are affected just as
11 all other civil servants.

12 MR. JACQUES: This is not a problem
13 peculiar to despatchers?

14 MR. ARMSTRONG: No, it is general.

15 MR. JACQUES: Will you sum up for
16 the Commission the representations -- successful or
17 unsuccessful -- which you may have made on behalf of
18 the employees of the pilotage authority or employees
19 connected with pilotage.

20 MR. ARMSTRONG: When I came to
21 the Association in March there had existed in Sorel
22 a rather disagreeable situation in that the office was
23 located on the top of a grain elevator. This situation
24 was known. I visited Sorel and had a rather frightening
25 ascent into this office at the top of the grain elevator.
26 It was generally a poor working situation.

27 I took up this matter with the Depart-
28 ment as one of my first grievances, if you will.
29 Happily, it was put to the Department in such a way
30 that they felt, I think, that we would have proceeded



1
2 somewhat further -- that is, perhaps outside of the
3 official level -- to seek redress. The result was
4 that the pilotage station was taken from the tower and
5 installed in a trailer in Sorel. I do not know exactly
6 where it is located now, but the location was changed
7 following our representations.

8 MR. JACQUES: Is there anything
9 else?

10 MR. ARMSTRONG: This is the only
11 what we might call hard example of something that we
12 did.

13 MR. JACQUES: Have you made
14 representations with respect to their earnings or
15 classification?

16 MR. ARMSTRONG: Yes. Thank you
17 for drawing that to my attention. We did comment on
18 the fact that in what is known as the cyclical review
19 of the salaries the transport operating clerks -- and
20 this is the classification of some of the despatchers
21 although not all -- are grouped with clerical employees
22 such as messengers and junior clerks. We feel this is
23 unfair. We feel they should be grouped with operating
24 and technical people such as aircraft controllers. It
25 may be that they would not compare with the higher levels
26 of aircraft controllers, but they might compete with
27 the lower grades, and this would have an effect on
28 salaries.

29 MR. JACQUES: Have you taken steps
30 with respect to this problem?



1
2 MR. ARMSTRONG: We have had an
3 opportunity lately in that the Heeney Committee --
4 this is the preparatory committee on collective
5 bargaining -- has given a grouping of all the classes
6 in the government service and all the classes have
7 fallen into six broad categories. We notice that
8 these people are still with office employees, and we
9 brought this to the attention of our Federation because
10 this is a problem that has consequences for more than
11 our Association. It is a matter of internal policy
12 such as they would deal with, and I would hope that
13 they will bring to the attention of the Heeney
14 Committee what we think is an inappropriate grouping
15 for this particular class.

16 MR. JACQUES: This problem is still
17 pending?

18 MR. ARMSTRONG: Yes. Collective
19 bargaining has been pending now, I think, for 50 years.

20 COMMISSIONER SMITH: Mr. Armstrong,
21 under Article 2(f) of your constitution it is stated
22 that it is affiliated with the Civil Service Federation
23 of Canada. Does the Civil Service Federation of Canada
24 make representations to the Department as well as your
25 own organization?

26 MR. ARMSTRONG: This is a very
27 good question, sir. I say that the Federation is
28 organized in such a way that a national association
29 such as my own would deal with the Department whereas
30 on matters of what we might call service-wide interest
the Federation would talk directly to government. In



1
2 this case and under the present ground rules, by
3 government I mean the Department of Finance, the
4 Treasury Board. Of course, the Civil Service Commission
5 is still involved on the government side in pay determi-
6 nation.

7 I might just elaborate. In the last two
8 reviews of salary the three major staff groups to which
9 I made reference in that letter worked together as a
10 conference on pay matters, and our Association as a
11 result does not deal directly with government at the
12 centre, if you will. This is the jargon that is being
13 used. At the departmental level we would deal with
14 departmental officials; and in our case that is Transport
15 primarily although we also have members in Mines and
16 Technical Surveys aboard some of their ships.

17 MR. JACQUES: In your membership
18 would you group not only the despatchers but also the
19 clerical staff of the pilotage offices?

20 MR. ARMSTRONG: We have clerical
21 staff in the pilotage offices who are members.

22 MR. JACQUES: Would you also group
23 the supervisors?

24 MR. ARMSTRONG: I might answer that
25 indirectly by saying we have people who are considered
26 management people outside. We have masters on vessels
27 as members, and we have marine agents. Naturally,
28 these people cannot take an active role in the Associ-
29 ation and they get the benefit of this group insurance
30 plan which is mentioned here.

MR. JACQUES: Are any of the local



1
2 supervisors of pilotage districts members of your
3 Association?

4 MR. ARMSTRONG: I do not know.
5 I spoke with Captain Lahaie at Quebec but I do not
6 know whether he is a member or not.

7 MR. JACQUES: Mr. Melancon of
8 Montreal?

9 MR. ARMSTRONG: I am not sure.
10 They may or may not be.

11 MR. JACQUES: Do you have a branch
12 in Ottawa?

13 MR. ARMSTRONG: No. There is no
14 branch here.

15 MR. LALONDE: Is the Civil Service
16 Federation of Canada affiliated with the C.L.C.?

17 MR. ARMSTRONG: No, it is not.

18 MR. LALONDE: It is independent?

19 MR. ARMSTRONG: Yes.

20 MR. LALONDE: Are there some
21 employees, clerical employees, of pilotage stations
22 who are not members of your Association but who would
23 be members of another association?

24 MR. ARMSTRONG: That is quite
25 possible.

26 MR. LALONDE: That is possible
27 inside the same pilotage station?

28 MR. ARMSTRONG: That is a very
29 definite possibility although the tendency is more
30 that the whole station would be with one group or
another, although you could have the split you have
described.



1
2 MR. LALONDE: In effect there are
3 no bargaining rights for the whole group necessarily?

4 MR. ARMSTRONG: No.

5 MR. LALONDE: It can be divided
6 inside the same station?

7 MR. ARMSTRONG: That is right.

8 MR. LALONDE: Did you receive
9 complaints from your members -- despatchers in particu-
10 lar -- that there was a shortage of staff? Do you
11 deal with these problems?

12 MR. ARMSTRONG: We have had some
13 representation. How shall I put it? The work at
14 stations is on a shift basis with the result that these
15 people rarely get a week-end together during the
16 operating season. It was felt that where they worked
17 the week-end they should be paid at overtime rates.
18 This is the only representation I have received.

19 MR. LALONDE: You have not
20 received personally some representations concerning
21 shortage of staff?

22 MR. ARMSTRONG: No.

23 MR. LANGLOIS: What happened to
24 the west coast as far as the Department of Transport
25 employees are concerned? Is there a branch on the
26 west coast?

27 MR. ARMSTRONG: We have a branch
28 at Victoria. There is an odd situation there in that
29 this is an internal problem within the Federation. There
30 is a directly affiliated branch called the B.C. Federal



1
2 Civil Servants Association, and a number of the
3 despatchers are members of that particular Federation
4 affiliate and are not members of our Association,
5 although recently we did work on their behalf. The
6 local we have on the west coast embraces crews and
7 officers on coastguard ships as well as other office
8 employees and prevailing rate employees.

9 MR. LALONDE: On the west coast,
10 you say most of them at this time are part of the
11 British Columbia --

12 MR. ARMSTRONG: No. Four or five
13 perhaps of immediate interest to this Commission are
14 members of the direct affiliate although, as I say,
15 we did work on their behalf just as though they were
16 members.

17 COMMISSIONER SMITH: Mr. Armstrong,
18 there has been evidence given in Vancouver by Captain
19 Eddy who said, among other things:

20 "The Civil Service Commission refused to supply
21 the additional office help we so desperately
22 need."

23 That appears at page 1192. He continues:

24 "We have a very small staff. In fact, we
25 have the same staff we had 20 years ago."

26 Would you take up a complaint of
27 that character?

28 MR. ARMSTRONG: It is very
29 difficult to say. Let me say first that most of our
30 people like to work overtime and they do not make any
bones about it. They are very frank about that. If



Armstrong
(Smith) 19838

1
2 we have a situation where we felt health was being
3 impaired, or something of that sort, because of long
4 hours and shortage of staff we might make represen-
5 tations, but we would have to examine it very carefully.

6 MR. BRISSET: Mr. Armstrong, you
7 have spoken of the upgrading of despatchers, particularly
8 in the St. Lawrence River areas. Would it be fair to
9 say that there is a problem there, a basic problem, in
10 the sense that before they can be upgraded their quali-
11 fications would have to be increased? For instance,
12 we were told this morning that in the harbour of
13 Montreal the despatchers of the National Harbours
14 Board were master mariners. If the despatchers in the
15 St. Lawrence River pilotage districts were also master
16 mariners -- as perhaps they should be -- would you not
17 think it would be easier to upgrade them?

18 MR. ARMSTRONG: This is what is
19 known as an "if-I" question, I think. Let me say this.
20 If qualifications were established at some different
21 level than that at which they now stand, I would hope
22 that our people would be given every opportunity to
23 qualify them for these jobs. I cannot make any
24 comment on what level of qualification the job requires.
25 I have no idea.

26 MR. JACQUES: Do you cover the
27 crews of the pilot boats?

28 MR. ARMSTRONG: Yes, we do, sir.

29 MR. JACQUES: All of them?

30 MR. ARMSTRONG: No. I do not know
exactly where. Some groups, for example, of pilot



1
2 boats may be members of a local branch and we would
3 have no way of knowing they were on a pilot boat,
4 whereas we have members on some of the larger ships,
5 for example the crew of the "John A. Macdonald", so
6 we know definitely who they are and what their numbers
7 are.

8 THE SECRETARY: Your Association
9 does maintain a list of its members at headquarters
10 in Ottawa?

11 MR. ARMSTRONG: Yes, we have an
12 alphabetical list by branches.

13 THE SECRETARY: Should we wish
14 to know whether a particular individual belonging to
15 a particular section of the marine services branch of
16 the Department of Transport belonged to your Association
17 you could tell us?

18 MR. ARMSTRONG: If the Commission
19 gave us certain names and asked if these people were
20 members, we could say yes or no.

21 MR. JACQUES: We would have to
22 give names? We could not say "among the members of
23 the crew --

24 MR. ARMSTRONG: No.

25 MR. JACQUES: We would have to
26 give you either a branch or a name?

27 MR. ARMSTRONG: Yes, and with pilots
28 boats it is probably a name.
29
30



1 THE SECRETARY: May I refer you to your
2 submission or letter dated September 25th, 1964 at
3 page 4 where you talk of the staff associations that
4 are represented on the National Joint Council of the
5 Public Service of Canada? For the purpose of illus-
6 tration could you tell the Commission what are these
7 staff associations which are represented on the National
8 Joint Council of the Public Service of Canada?

9 THE WITNESS: Well, without wishing
10 to be facetious I think it might be easier to say
11 which associations are not members.

12 THE SECRETARY: May I stop you there?
13 Before you go any further could you tell us what is
14 the National Joint Council?

15 THE WITNESS: The National Joint Council
16 was established some 20 years ago by the government
17 and it is modelled on what is known as the Whitely
18 County system in the United Kingdom. It is a large
19 committee with official and staff side. The intention
20 was that this would meet regularly and resolve
21 service-wide problems.

22 It is perhaps easier to point
23 to something they did. The group medical/surgical plan
24 which was enforced for government employees came about
25 as a result of deliberations by that body. It deals
26 more with general problems of that nature and I think
27 it proceeds by unanimous agreement. I do not think
28 the government is committed to accept a National Joint
29 Council proposal but they carry some weight when
30 proposals are made.



1 THE SECRETARY: So I think it is a very
2 large assembly of staff associations?

3 THE WITNESS: Yes. I cannot give you
4 the exact membership but it may be ten or twelve on
5 each side.

6 THE SECRETARY: You mention the three
7 main federations or associations of Civil Servants on
8 the first page of your letter, namely the Civil
9 Service Federation of Canada, the Civil Service
10 Association of Canada and the Professional Institute
11 of the Public Service of Canada. I take it that all
12 three are represented on the National Council?

13 THE WITNESS: That is correct. Many of
14 the federation nationals are also represented.

15 THE SECRETARY: This National Joint
16 Council meets regularly?

17 THE WITNESS: It is required to meet
18 once a month.

19 THE SECRETARY: I see -- in Ottawa?

20 THE WITNESS: Yes, sir, in Ottawa.

21 THE SECRETARY: Thank you.

22 THE CHAIRMAN: Are there any further
23 questions of Mr. Armstrong?

24 Thank you very much.

25 MR. JACQUES: If you feel you have
26 further representations to make to the Commission on
27 behalf of the employees of the Pilotage Authority, feel
28 free to do so.

29 THE WITNESS: Thank you, and if the
30 Commission would like any assistance from our Association



1 we will be glad to give it.

2 CAPTAIN SLOCOMBE: My Lord, may I say
3 that as far as the dispatchers are concerned we have
4 very strong hopes that there is a reclassification
5 coming shortly?

6 THE CHAIRMAN: Thank you very much.

7 THE SECRETARY: Along the lines pointed
8 out by Mr. Brisset -- ships' Masters?

9 CAPTAIN SLOCOMBE: Oh, no.
10 ---Witness withdrew.

11 -----

12 CAPTAIN F. S. SLOCOMBE, Sworn

13 DIRECT EXAMINATION BY MR. JACQUES:

14 Q. Captain Slocombe, there are
15 several documents to file and it might be a prudent moment
16 to do it.

17 THE CHAIRMAN: Right.

18 THE WITNESS: These, My Lord, are the
19 two letters which were requested yesterday -- the
20 letter of December 8th to the Deputy Minister of Labour
21 from the Deputy Minister of Transport dated December
22 8th, 1959 and the reply dated February 2nd, 1960 to
23 Mr. Baldwin from the Deputy Minister of Labour.

24 THE SECRETARY: May I suggest, My Lord,
25 that we attach this to the Exhibit which was filed
26 yesterday, namely 1361, which contains these two
27 letters?

28 THE CHAIRMAN: It was a bundle of
29 documents with letters to Mr. Baldwin dated January,
30 1963.



1 MR. JACQUES: Q. Since February, 1960
2 there has been no further exchange of correspondence
3 or views between the two Departments with respect to
4 the problem of bringing pilots under the Industrial
5 Relations and Disputes Investigation Act?

6 A. So far as I know.

7 THE SECRETARY: The Exhibit number, My
8 Lord, is 1361, namely a letter from the Deputy
9 Minister of Labour to the Deputy Minister of Transport
10 dated the 15th January, 1963, to which was attached
11 a set of documents pertaining to ---

12 THE CHAIRMAN: So these are going to
13 be attached to that? That is all right.

14 ---ADDITION TO EXHIBIT NO. 1361: Letter dated December
15 8, 1959 from the
16 Deputy Minister of
17 Labour to the Deputy
18 Minister of Transport
together with reply
dated February 2nd,
1960.

19 THE WITNESS: My Lord, some days ago I
20 was asked to produce a copy of a memorandum submitted
21 to the Minister of Transport by the United Montreal
22 Pilots signed by Mr. Paul Gerin-Lajoie and dated
23 March 8th, 1957.

24 THE CHAIRMAN: Was a number given to
25 that?

26 THE SECRETARY: I do not think, My Lord,
27 it was entered into the record. It will be 1372 then.

28 THE WITNESS: That document, My Lord,
29 has to do with the Three Rivers change. It was
30 suggested as a separate District -- two separate



1 Districts.

2 MR. JACQUES: I think it has been filed
3 already. You might check on that.

4 THE WITNESS: On that same subject I
5 remarked that I had a copy of some minutes of a meeting,
6 an earlier meeting in the earlier stages of these
7 negotiations. At that meeting, at which I was the
8 Chairman, were the Shipping Federation representatives
9 and a representative of the Montreal Pilots' Committee.
10 This was dated June 19th, 1950. This is only for the
11 purpose of indicating to the Commission the kind of
12 negotiations that had been going on.

13 THE CHAIRMAN: I see. But the problem is
14 settled, you know.

15 MR. LALONDE: Oh, good!

16 MR. JACQUES: This may as well be annexed
17 to the previous Exhibit, My Lord -- 1372.

18 THE CHAIRMAN: You are the one, Mr.
19 Brisset, who asked for that.

20 MR. BRISSET: I do not know what it is,
21 My Lord.

22 THE CHAIRMAN: Well, take your time.

23 THE WITNESS: There was a question about
24 the staff at Three Rivers at the Three Rivers Pilotage
25 Station. The staff is five transport operating clerks
26 and one clerk 4 in charge. The Organization Research
27 Division of the Department carried out a survey of
28 this office and did not consider any additional staff
29 necessary except for the addition of a Supervisor, and
30 this position is now being advertised. As I mentioned



1 before, there is an increase in the salary for the
2 transport operating clerks we have in the mill.

3 MR. JACQUES: Q. You mention a
4 Supervisor. Do you mean a local Supervisor who would
5 be similar to the local Supervisor in Montreal?

6 A. Yes. It would be a Supervisor;
7 it would be an extra man in charge who would be able
8 to supplement the staff at rush hours and so on.

9 Q. Yes, but would he be included
10 in the definition of the word "Supervisor" in the
11 Montreal by-laws?

12 A. I am told yes.

13 Q. So you would have for that
14 District two Supervisors?

15 A. Three actually, because the
16 Quebec Supervisor also has some authority over the
17 dispatching, particularly of the Montreal pilots.

18 Q. In Three Rivers?

19 A. In Quebec -- the Quebec
20 Supervisor. He has the dispatching of the Montreal
21 pilots from Quebec.

22 THE CHAIRMAN: Yes, there are three
23 Supervisors but a group of the Montreal River pilots
24 would come only under two Supervisors, either Quebec
25 and Three Rivers or Three Rivers and Montreal?

26 THE WITNESS: That is correct, My Lord,
27 yes.

28 MR. JACQUES: Q. The Supervisors though
29 are nominated for one District. Pilots of other
30 Districts may under certain circumstances come under the



1 authority of the Supervisor of another District, but
2 the Supervisor is appointed for the Quebec District
3 and there is a Supervisor appointed for the Montreal
4 District. If you appointed one in Three Rivers there
5 would be two Supervisors appointed for the Montreal
6 District?

7 A. Here we are again on a legal
8 nicety, My Lord.

9 THE CHAIRMAN: What about the disciplinary
10 power for instance?

11 MR. JACQUES: Q. That is what I have
12 in mind; who would have jurisdiction?

13 THE CHAIRMAN: And the Supervisor is
14 not distributing the money, but in other cases he is.

15 THE WITNESS: This is something that
16 would have to be settled.

17 MR. LALONDE: My Lord, I would object
18 very strongly to the pursuit of this line of questioning
19 if it were to delay the appointment of an extra man.

20 THE CHAIRMAN: I do not know whether
21 it is an example of what is happening and why the law
22 and the regulations are not followed too strictly.

23 THE WITNESS: It has a lot to do with it,
24 My Lord.

25 MR. LALONDE: I want the law to be
26 applied, My Lord, but at the same time the pilots also
27 want an extra man.

28 THE WITNESS: Then there is the question
29 of the duties of the Chief of the Nautical and Pilotage
30 Division -- that is, myself. The description of the



1 duties is as follows: He is responsible for the
2 administration of the sections of the Canada Shipping
3 Act relating to registry of shipping, management of
4 tonnage, Masters and Mates examinations, registry of
5 seamen, engagement and discharge of seamen by shipping
6 Masters, relief of distressed seamen, pilotage,
7 recovery of wrecks, salvage, inquiries and investigations
8 into marine casualties, port wardens and supervision of
9 the application of the livestock and grain loading
10 regulations for ships loading at Canadian ports for
11 overseas destinations.

12 There is a chart here prepared
13 by our Organization and Research Division of the
14 Department showing the functions of the Division.

15 MR. JACQUES: Q. I see, and what is
16 contained under the heading "Chief Nautical Division"
17 with respect to nautical regulations, nautical
18 examinations, pilotage and registry of shipping, would
19 be under your authority?

20 A. Yes.

21 MR. JACQUES: I should like to file
22 this document as an Exhibit.

23 THE CHAIRMAN: To be attached to the
24 chart of the Department we had before.

25 MR. JACQUES: 1146, I believe.

26 ---ADDITION TO EXHIBIT NO. 1146: Chart prepared by the
27 Organization and
28 Research Division of
29 the DOT, showing the
30 functions of the
Division.

THE SECRETARY: Now, My Lord, may I



1 revert back to the other Exhibit to be attached to
2 something that had already been entered into the
3 record? We gave it the number 1372. The original
4 document, being a submission from Counsel for the
5 United Montreal Pilots, Maitre Paul Gerin-Lajoie, dated
6 March 8th, 1957, has been entered as Exhibit 1333, so
7 the report of the meeting convened at Montreal on
8 June 15th to discuss this submission is to be attached
9 to 1333.

10 ---ADDITION TO EXHIBIT NO. 1333: Copy of memorandum
11 submitted to the
12 Minister of Transport
13 by the United Montreal
14 Pilots signed by Mr.
15 Paul Gerin-Lajoie,
16 dated March 8th, 1957,
17 together with minutes
18 of meeting held on
19 June 19th, 1950.

20 THE CHAIRMAN: That is all right.

21 THE SECRETARY: And 1372 remains blank
22 now.

23 THE WITNESS: Then I have the duties of
24 Captain Jones as Supervisor of Pilotage: Under the
25 direction of the Chief Nautical Division, to exercise
26 supervision over the activities of Pilotage Districts
27 with a view to ensuring efficient pilotage service within
28 the framework of the provisions of Part VI of the
29 Canada Shipping Act. Part VI(a) would have to be
30 added to that now, My Lord.

This includes in the case of
Pilotage Districts for which the Minister is the
Pilotage Authority all details of operation, including
the operation and maintenance of pilot vessels and



1 stations, the collection and distribution of pilotage
2 dues, the licensing and discipline of pilots and
3 the framing and implementation of by-laws for these
4 Districts respectively; also the less detailed
5 supervision of Pilotage Districts under local authori-
6 ties and the advising of such local authorities on
7 by-laws and the processing of the by-laws of these
8 Districts for submission to the Governor-In-Council.

9 Then I have a list of the
10 certificates of competency issued from January 1st,
11 1958 to August 31st, 1964.

12 MR. JACQUES: Q. This is Exhibit 1359.

13 A. Here is the file of correspond-
14 ence having to do with the income tax of pilots.

15 Q. That is Exhibit 1358.

16 A. Then there was a question as
17 to the issuance of licences to four pilots in the
18 Montreal District early in 1962. According to our
19 records here J. Carey was licensed on April 5th, 1962
20 after being examined on March 8th, 1962 and the
21 same dates apply to Gaston Deneau, Andre Germain and
22 Jean Paul Houde.

23 Q. They were all examined on the
24 same date and the licence was dated --

25 A. April 5th.

26 Q. Then, My Lord, I was asked to
27 speak to the Deputy Minister on the two questions that
28 were raised. One was the reasons for the exemption
29 of U.S. lakers in the Cornwall District. Mr. Baldwin --

30 THE CHAIRMAN: In the proposed legis-



1 lation?

2 THE WITNESS: In the legislation that
3 was passed, My Lord.

4 THE CHAIRMAN: Was passed. I see.

5 THE WITNESS: Oh, yes. This is an
6 amendment to Section 346. Mr. Baldwin said, of course,
7 this was a cabinet policy decision and we cannot give
8 any reasons. However, Mr. Baldwin said that those
9 concerned had very much in the forefront of their
10 thoughts the fact: (1) that negotiations were taking
11 place with the U.S. government about Great Lakes
12 pilotage; (2) that U.S. lakers had always been free
13 to trade to Montreal without any pilotage restrictions;
14 (3) that the withdrawal of this privilege would have
15 opened up the whole question of compulsory payment of
16 dues below Montreal and this was understood to be on
17 very shaky grounds with regard to American vessels,
18 in view of treaty commitments.

19 With regard to the other
20 question as to --

21 MR.JACQUES: Q. I am sorry to interrupt
22 you, but before you move on to the next question, you
23 made a reference to compulsory payment of dues below
24 Montreal?

25 A. In the Montreal and Quebec
26 Districts.

27 Q. You said that if the policy had
28 been different it would have opened up the problem of
29 compulsory payment below Montreal?

30 A. Yes, which might have jeopardized,



1 as I understood Mr. Baldwin, which might have
2 jeopardized the position below Montreal.

3 THE CHAIRMAN: In view of treaty
4 commitments.

5 MR. JACQUES: Q. Was there any
6 discussion then in your Department with respect to
7 the legality of compulsory payment of pilotage
8 below Quebec?

9 A. Not on our level. I don't
10 know what went on up above but External Affairs,
11 as you know, had been very interested in this matter.

12 The other question was a
13 question about political influence, Mr. Colley's
14 reference to what Mr. Baldwin had said to him.

15 Mr. Baldwin cannot recall
16 this particular conversation but he said it is true
17 that upon occasion individual pilots and groups had
18 put their views forward through M. P.'s or former
19 M. P.'s in regard to departmental action about
20 pilotage. This he wished to point out is not abnormal
21 because M.P.'s are frequently asked to intervene
22 on behalf of their constituents on all subjects, not
23 only pilotage.

24 MR. LALONDE: I am wondering whether
25 Mr. Leopold Langlois was classified as a former M.P.?

26 THE WITNESS: I think former M.P.'s
27 was referring to people who have become Senators. I
28 shouldn't say that. Perhaps I am just jumping to that
29 conclusion.

30 Then we have these copies of



1 time agreements.

2 MR. JACQUES: I wonder if they have a
3 number? "Special time agreement for seamen in home
4 trade, inland or minor waters".

5 THE WITNESS: It will be noted --

6 THE SECRETARY: My Lord, this was already
7 filed as Exhibit 1327.

8 MR. JACQUES: The new Exhibit, My Lord,
9 is a photocopy of an agreement actually signed. It
10 is not a form and there are six of them relating to
11 six different crew members indicating the ships on
12 which they were to serve and the date on which the
13 Department received a copy of the time agreement as
14 indicated in the letter.

15 THE WITNESS: It will be noted that
16 there is only one there in 1963. I am assured by
17 Canada Steamship Lines that they are not doing this this
18 year. There was just one case at the beginning of the
19 season and this was a man, St. Ange.

20 MR. JACQUES: Q. That must have been
21 1964?

22 A. I am sorry, yes, 1964. They
23 are not doing this any longer.

24 THE SECRETARY: We might annex this to
25 the original Exhibit, if it is convenient.

26 THE CHAIRMAN: Right. What is the
27 number again?

28 THE SECRETARY: I think it is 1347.

29 My Lord, may I make a correction
30 to the record. An addendum to Exhibit 1146 was attached



1 to the statement which is filed pertaining to the
2 duties of the various sections in the Nautical and
3 Pilotage Division of the Department of Transport. We
4 had given a number originally on the 20th of
5 December as 1353 and at that time there was a mention
6 of the duties of the DOT Superintendent of Pilotage,
7 but perhaps this number could be used provided the
8 description is modified to indicate that.

9 THE CHAIRMAN: Have we not annexed that
10 to the chart?

11 THE SECRETARY: We have a specific number
12 for this already, My Lord, unless we cross off 1353.

13 THE CHAIRMAN: Let us do that.

14 THE SECRETARY: 1353 then becomes blank.

15 THE WITNESS: I should say, My Lord, that
16 the title now is Superintendent of Pilotage. I referred
17 to it as Supervisor of Pilotage.

18 THE SECRETARY: Of course, here the
19 duties would be the ones mentioned in the third
20 column?

21 THE WITNESS: That is correct.

22 MR. JACQUES: Q. And the other
23 duties pertain not to the Superintendent of Pilotage
24 but to yourself?

25 A. Right.

26 THE SECRETARY: It remains, sir, attached
27 to 1146 and 1353 would appear in the list as blank.

28 MR. JACQUES: Q. I believe also,
29 Captain, that you have had time to study the question
30 of the CARL SCHMEDERMAN?



1 A. Yes. Unfortunately I find
2 the file is not here but I can answer shortly that
3 we were informed that Captain Walsh was aboard the
4 CARL SCHMEDERMAN and was on board this ship for this
5 space between Snell Lock and St. Regis.

6 We made inquiries about it
7 and Captain Edwards informed us that the U.S. Coast
8 Guard had made an unofficial inquiry and they said that
9 Captain Walsh was signed on for the season as
10 Assistant Captain. That is all we have on this.

11 Q. I think there was a question
12 on the nationality of the crew of the ship?

13 A. Yes. I was wrong when I
14 started answering this question. I thought they
15 were the same as the Reock vessels and the Hindman
16 vessels. This was not the case. I find that this
17 crew is not Canadian. She is registered in Nassau
18 and the crew were not Canadian.

19 -----
20 CROSS-EXAMINATION BY MR. LALONDE:

21 Q. Captain, as far as stopping
22 at Three Rivers was concerned, is it not a fact that
23 you have two men full time in Quebec, on shifts, but
24 you always have two men, two dispatchers at stations
25 in Quebec and Montreal?

26 A. Yes.

27 Q. One dispatcher and one man
28 for the Signal Service?

29 A. Yes. We amalgamated the two
30 together so there would be two on watch at a time.



1 Q. And with the appointment of a
2 Supervisor at Three Rivers, or whatever the title of
3 the man may be, what would be the situation?
4 Would you end up with having two on the station all the
5 time also there?

6 A. No, not quite all the time.
7 We hope that by staggering things that we will be
8 able to ensure there is better coverage than there has
9 been in the past.

10 Q. Is there any particular reason
11 why the Research Department suggested the appointment
12 of a Supervisor instead of the appointment of an
13 additional dispatcher as such?

14 A. I don't know. They went and
15 stayed there and studied the job and they didn't come
16 up with a suggestion that the staff be increased.

17 Q. But did they come up with a
18 suggestion about a Supervisor or is this one of your
19 own suggestions?

20 A. We had asked them to go there
21 with a view to getting some answers. This is their
22 suggestion there should be a Supervisor.

23 Q. That they should appoint a
24 Supervisor rather than an additional dispatcher?

25 A Yes.

26 THE CHAIRMAN: Would that be only a
27 question of earnings?

28 THE WITNESS: No, My Lord.

29 THE CHAIRMAN: Or of duties to be
30 performed?



1 THE WITNESS: More of duties to be
2 performed. No. There were some complaints about some
3 irregularities and it was thought that there should be
4 a senior man to oversee the operation.

5 MR. LALONDE: Q. Do you know whether
6 this particular man would be in a position to fulfill
7 the functions of a dispatcher also, if necessary,
8 or is this above his duties -- or below his duties?

9 A. Well, I would say that any
10 Supervisor will.

11 THE CHAIRMAN: The Supervisor is the
12 one responsible for dispatching anyway.

13 THE WITNESS: He would see the
14 dispatching functions were covered properly. It could
15 be during the day perhaps he would be able to cover
16 the thing better.

17 MR. LALONDE: Q. Is the senior clerk
18 that is now there going to assume dispatching duties
19 when they have the new Supervisor appointed?

20 A. He does now. I understand Mr.
21 Pomier does perform some dispatching.

22 Q. But now that you would have a
23 Supervisor, you would have higher authority. I would
24 presume this would imply that the senior clerk would
25 have less to do, as far as administration is concerned?

26 A. Perhaps this is the idea. I
27 am not sure but certainly it will enable Mr. Pomier to
28 devote more time to dispatching.

29 Q. You don't have any more detail
30 as to how this would work between the Supervisor and the



1 senior clerk at the present time?

2 A. No, I'm afraid not. He would
3 be a man senior, of course. He would be in charge of
4 the station and any recommendations he makes or
5 reports he makes will certainly be listened to.

6 Q. Which at the present time is
7 done by the senior clerk?

8 A. That is right.

9 Q. So that in effect you would have
10 a substantial reduction of duties on the part of the
11 senior clerk?

12 A. What is your question again?

13 Q. I forget.

14 A. We figure that we are getting
15 somebody there who will keep a better eye on things
16 and we hope there will be an improvement.

17 Q. Now, the licences issued on
18 April 5th, is it possible they could have been issued
19 retroactively; that is, the actual time that they
20 would have been issued would have been later than
21 April 5th?

22 A. If they were dated April 5th
23 then the local Supervisor would probably be informed
24 immediately and --

25 Q. Yes, but that is not my
26 question. My question was whether it happens that you
27 write licences and you date licences today, for
28 instance, from the 1st of September in actual practice,
29 or are they dated the day they are signed?

30 A. They are dated when they are



1 supposed to be signed.

2 Q. Now --

3 A. You understand we send them
4 up for a signature. It may be a day before they
5 are signed.

6 Q. Yes. In effect you date them
7 and you send them up for a signature. Is that the
8 practice followed?

9 A. If we think there is a
10 possibility of getting them signed, yes.

11 Q. The dating is done by you?

12 A. Yes.

13 Q. So that in effect you would
14 have dated these things on the 5th of April?

15 A. Yes, sir.

16 Q. And the telegram from the
17 pilots was sent on the 4th of April or the 3rd, if
18 I remember correctly.

19 A. I don't know.

20 Q. In 1962 now I would like you
21 to look at this special time agreement filed as
22 Exhibit 1347. I think you said these were the only
23 ones which were in the Department?

24 A. That is correct.

25 Q. I would like to refer you to
26 the other part of Exhibit 1347 in connection with the
27 Upper Lakes Shipping Company ships, THE JAMES NORRIS
28 and HILDA MARCHAND. I am showing you the correspondence
29 between Captain Jones and Captain Edwards as well as
30 between Captain Edwards and the Upper Lakes Shipping.



1 I notice that this bundle of correspondence does not
2 show any answer from Upper Lakes Shipping although
3 Captain Edwards wrote on July 16th, 1962 complaining
4 that unlicensed pilots were used to pilot the vessels,
5 THE JAMES NORRIS and HILDA MARCHAND. If you would look
6 at the letter of Captain Jones on July 30th to Captain
7 Edwards, Captain Jones said in the third paragraph:
8 "As for the fact that these vessels have Masters which
9 they interchange from ship to ship, we refer you to
10 Article 172 and 173, paragraph C of the Canada Shipping
11 Act, which gives to the shipping companies the
12 prerogative of signing agreements for two or more vessels
13 so that if that is the case then the people so
14 interchanged must be regarded as bona fide members
15 of the crews of the ships they are serving upon".

16 Now, according to the Act these
17 people would have been required to file with the
18 Department special time agreements, would they not?

19 A. Yes, if they did have it, yes.

20 Q. Now, there does not seem to
21 have been in your Department, from what you have
22 produced today, any such time agreements filed?

23 A. No, that is all they can find.

24 Q. This correspondence, which is
25 part of Exhibit 1347, implies very clearly -- although
26 we do not have the letter from Upper Lakes which I
27 would ask you to look in your files for to see if you
28 have such a letter -- the letter from Captain Jones to
29 Captain Edwards, I submit, implies very clearly that
30 the practice followed by Upper Lakes Shipping was the



1 same as the one followed by Canada Steamship Lines?

2 A. I note that Captain Jones
3 says: "If this is the case these people were
4 interchanged".

5 Q Yes, I am referring you to the
6 first paragraph of the same letter which says: "We
7 have your letter of July 18th and attachment"-- and we
8 have the letter of July 18th except the attachment
9 seems to have vanished somehow -- "concerning the
10 above Company's arrangements for pilotage and we
11 must inform you that as the vessels are exempted
12 in your District, a bona fide member of the crew can
13 do pilotage under the Master's directions"?

14 A. Yes.

15 Q. Which I would assume infers
16 pretty clearly that this was a stand taken by the
17 company in the letter attached?

18 A. I personally would not have
19 used the word "to do the pilotage", because if he is
20 a member of the crew, he is not a pilot.

21 Q. But is it not pretty clear
22 from that letter this was the stand taken by the company?

23 A. If they did they should have --
24 you are quite right -- they should have filed a
25 copy.

26 Q. But you never had anything of
27 the sort and you didn't make, as far as can be
28 ascertained, any check as to whether special time
29 agreements were filed, did you?

30 A. No, I'm afraid not.



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1 Q. So would you mind checking
2 and bringing forth the letter of Upper Lakes laker?

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2 MR. LALONDE: To your knowledge,
3 is there any machinery to follow up the practices in
4 that respect?

5 CAPTAIN SLOCOMBE: No, there is
6 not, Mr. Lalonde. Mr. McGillivray and I were talking
7 about this yesterday. It is a question as to how
8 we should do the policing. If there is a complaint
9 made to us, then we should follow it up; there is no
doubt about that.

10 MR. LALONDE: You have no means of
11 knowing
/unless you receive a complaint, whether the company
12 has people with agreements or not.

13 CAPTAIN SLOCOMBE: That is right.

14 MR. LALONDE: It is up to them
15 to abide by the law.

16 CAPTAIN SLOCOMBE: Yes, they are
17 responsible for that.

18 MR. LALONDE: So we cannot take
19 these six time agreements as evidence that there were
20 only six time agreements in effect during the last
two years?

21 CAPTAIN SLOCOMBE: No, all we can
22 say is that these are the only ones that were forwarded
to us.

23 MR. LALONDE: You said that Canada
24 Steamships Lines stated to you that apart from one
25 case they did not resort to that practice any more.
26 Is that correct?

27 CAPTAIN SLOCOMBE: This is right.

28 MR. LALONDE: Did they tell you
29
30



1
2 what practice they employ now?

3 CAPTAIN SLOCOMBE: They said
4 they had relieving masters, but there is no other
5 master on board when that master is on. There is
6 only one master on at a time.

7 MR. LALONDE: So that they could
8 have a master embark at Snell Lock, for instance, down
9 to Montreal and the same master could disembark in
10 Montreal and another master go on board? That could
11 be done?

12 CAPTAIN SLOCOMBE: Yes, it could
13 be done.

14 MR. LALONDE: We still have some
15 information to be forwarded in connection with
16 casualties.

17 CAPTAIN SLOCOMBE: I asked, and
18 all we can say is that those are all the ones that
19 were reported to us.

20 MR. LALONDE: So we then may
21 conclude that the additional casualties that are
22 reported in the statistics of the Seaway were not all
23 reported to the Department?

24 CAPTAIN SLOCOMBE: Yes. We can
25 say without doubt that our lists are not complete in
26 this respect.

27 MR. LALONDE: There is an obli-
28 gation to report such casualties, is there not, in
29 the case of Canadian and British ships?

30 CAPTAIN SLOCOMBE: There is, but as
we were saying yesterday, the question is how small a



1
2 casualty do you have to report?

3 MR. LALONDE: I see, but notice
4 of collision, for instance, between the T.C. McLagan
5 and the Daniel A. Joy certainly was something which
6 probably made a little damage which was worth noticing!

7 CAPTAIN SLOCOMBE: I am informed
8 that again was not a collision in respect of two ships
9 underway but a collision when one ship was alongside
10 the wall and the other touched her while going alongside

11 MR. LALONDE: I notice another
12 accident for which the Seaway report \$68,000 damages.
13 Would you say this was worth reporting?

14 CAPTAIN SLOCOMBE: Yes, definitely.

15 MR. LALONDE: The Department up
16 to now has never thought fit to prosecute for failure
17 to report things like that?

18 CAPTAIN SLOCOMBE: No, sir, we
19 tell them they are subject to fines and so on; we try
20 to educate them. If we could get a change in the law,
21 as in the case of the U.S. Coastguard, limiting this
22 to casualties over \$5,000 damage or something like
23 that, then we would be on firmer ground and could be
24 much more strict in this matter.

25 I might say that the talk about ships
26 being damaged in the Seaway by the pilots in the Seaway
27 was something to which I took violent objection because
28 they were trying to do something that those ships were
29 not expected to do anywhere else in the world, and
30 then they were talking of a collision when a ship dented
a plate.



1
2 MR. LALONDE: Those are all the
3 questions I have, Mr. Chairman, to put to Captain
4 Slocombe. There is one question I would like to ask
5 of Captain Jones.

6 THE CHAIRMAN: Are there any
7 further questions of Captain Slocombe?

8 THE SECRETARY: Captain Slocombe,
9 did you bring with you the exchange of correspondence
10 between your Department and the Shipping Federation
11 with respect to the change of a pilot requested by
12 Mr. Brisset as Exhibit 1331?

13 CAPTAIN SLOCOMBE: Yes, we will
14 take a note of that.

15 THE CHAIRMAN: There was an
16 agreement on that to the effect that files would be
17 shown to us because it was quite bulky, I believe.

18 CAPTAIN SLOCOMBE: Yes, that is
19 right, my lord. That is the one you were going to look
20 at and then tell us just what you wanted.

21 THE SECRETARY: And the reply to
22 Question 11 of the additional questions pertaining to
23 turnover and --

24 CAPTAIN SLOCOMBE: Yes, that and
25 the Treasury Board minutes about remuneration of pilots
26 in Districts No. 2 and No. 3. I would ask if we could
27 have those put in by the personnel representative at
28 the next session. These need to be explained and I
29 would not be able to explain them properly myself.

30 THE SECRETARY: While I am on the
subject, my lord, may I point out that we have not
given a number to a document that was in fact entered



1
2 into the record in Montreal and was to be entered
3 into our records, namely the report of the court of
4 inquiry into the conditions of the "Tritonica" and
5 the "Roonagh Head" near Ile aux Coudres in the summer
6 of 1963. Perhaps advantage should be taken of the
7 fact that we have a blank number now, namely 1353, and
8 also ask Mr. Slocombe to be good enough to provide
9 the Commission with a copy of that report.

10 THE CHAIRMAN: That was the
11 intention at the time. It was under investigation.
12 The judgment of Mr. Justice Smith has been filed, has
13 it not?

14 MR. JACQUES: We have no trace of
15 it, my lord.

16 CAPTAIN SLOCOMBE: I am sure we
17 can get the report and the judgment.

18 ---EXHIBIT NO. 1353 - Court of inquiry report in
19 (to be produced) reference to the "Tritonica"
20 and Roonagh Head"

21 MR. LALONDE: In the terms of
22 duties there is mention of a recommendation in connection
23 with changes in pilotage tariffs, numbers of pilots,
24 etc., based on traffic, earnings and work load in the
25 case of District No. 2 and District No. 3 pilots. Would
26 that still be under your responsibility or would that
27 be under the responsibility of personnel? I am
28 referring to the number of pilots.

29 CAPTAIN SLOCOMBE: That would be
30 a matter of our responsibility, yes, as a matter of
recommendation I should say.



1
2 MR. LALONDE: Mr. Chairman, I
3 would like to ask a few questions of Captain Jones.

4
5 CAPTAIN D. R. JONES, sworn

6 MR. LALONDE: I am showing you
7 Exhibit 1301 which you have seen before. I show you
8 the last page of Exhibit 1301. I show you also Exhibit
9 1298, which is a summary of the pilots time on assign-
10 ment, 1962. At the bottom of the page it is stated,
11 "Hours per effective pilot District No. 2, 3,576.1 and
12 1,961.0 while for the same year on Exhibit 1301 you
13 have 1,461 for District No. 1 and 1,392 for District
14 No. 2. Can you explain to me what reasons, if any,
there are for such differences?

15 CAPTAIN JONES: No, I am afraid
16 I cannot without looking it up.

17 MR. LALONDE: For 1963 for District
18 No. 1 on Exhibit 1301 you indicate 1,349 hours, while
19 you have 1,189.6 for District No. 1 on Exhibit 1300;
20 and for District No. 2 you have 2,814 hours on Exhibit
21 1301 while you have 2,999.5 on Exhibit 1300. Can you
explain the difference?

22 CAPTAIN JONES: No, not without
23 looking them up.

24 MR. LALONDE: Then I will give
25 you 15 days to think about it!

26 THE CHAIRMAN: That is all we
27 have for today, gentlemen, so we will adjourn until
28 Monday, October 19, when we will continue in this same
room.

29 ---Adjournment
30 -----

BINDING SECT.

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